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Wordsworth Donisthorpe, ***Law in a Free State*** [1895]

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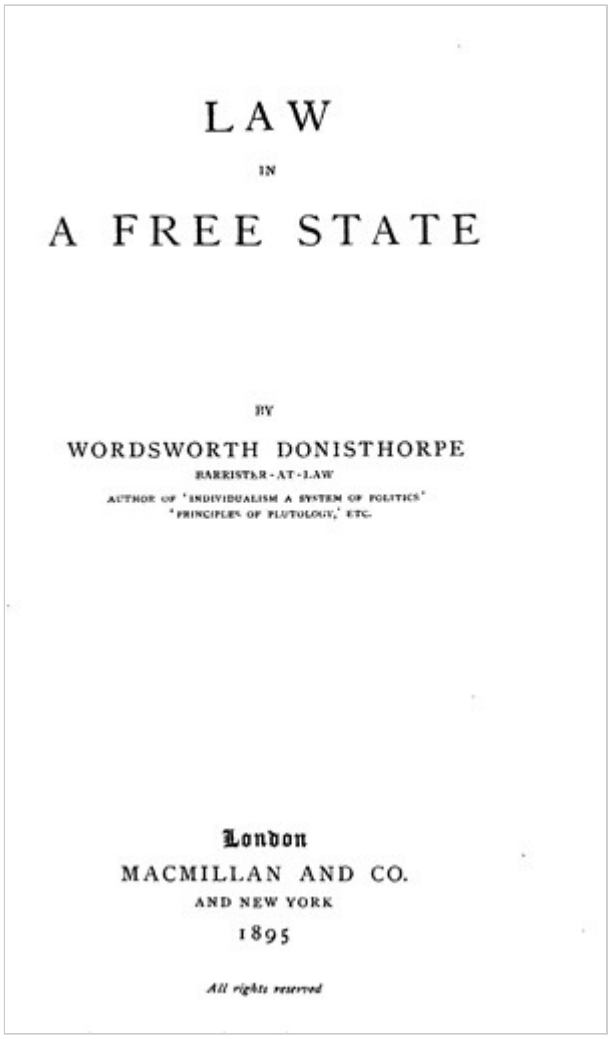

LAW

IN

A FREE STATE

BY

WORDSWORTH DONISTHORPE

BARRISTER-AT-LAW

AUTHOR OF 'INDIVIDUALISM A SYSTEM OF POLITICS' 'PRINCIPLES OF PLUTOLOGY,' ETC.

London

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About This Title:

A collection of essays by a radical individualist political thinker on a range of topics which he called "the hardest nuts to crack", in other words, topics which pushed the theory of individual liberty to its limits. He discusses questions of libel, of cruelty to animals, of copyright, of adulteration, of the relation of the sexes, of rights over land, and of nuisance

About Liberty Fund:

Liberty Fund, Inc. is a private, educational foundation established to encourage the study of the ideal of a society of free and responsible individuals.

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In Affectionate Memory
of
my friend, kinsman
and fellow-worker in the cause of individualism
WILLIAM CARR CROFTS
who died in harness, 26th november 1894

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PREFACE

Twentyyears ago I took a census of the individualists in this country, and I found that they could all be seated comfortably in a Bayswater 'bus. Twelve years ago I took another, and I found that their number had increased to about three hundred. This increase I attributed mainly to the teachings of Mr. Herbert Spencer. At the present time the individualists of England may be counted by thousands, and perhaps tens of thousands. I attribute this further increase partly to the same cause, partly to the efforts of the Personal Rights Defence Association and the Liberty and Property Defence League, and partly to the visible evil effects of the practical State socialism of the Legislature.

In addition to these believers in the gospel of liberty, there is a large body of Englishmen (possibly half the population) who are inclined in that direction, as most Englishmen have been since they deserved the name, and who, nevertheless, inconsistently appeal to socialism for the attainment of certain ends which at first sight seem to be unattainable under a *régime* of freedom.

It is to this section of the public that these pages are addressed. I must therefore crave the indulgence of all philosophical anarchists if they find much herein which they already know very well. But even these latter will admit that there are many “nuts” which individualists find very hard to “crack.” Questions of libel, of cruelty to animals, of copyright, of adulteration, of the relation of the sexes, of rights over land, of nuisance and many others, are difficult to solve straight off on the principle of equal liberty. The following nine chapters are offered to the public as the best “nutcrackers” which I am able to turn out of this workshop. Some semi-scientific savants are wont to declare that the photography of colours, flying machines, artificial indiarubber, and many hitherto unsolved problems may be easily accomplished by applying “electricity,” but *how* to apply it they do not tell us. Similarly, certain individualists of the absolutist sect propose to solve all social problems by applying the principle of liberty. But there they rest. They will not, or cannot, tell us *how* to do it. If I have succeeded to any, even the slightest, extent in supplying this needed explanation, I am content. I offer my nutcrackers for what they may be worth.

I have to thank Mr. John Murray for kindly permitting me to republish Chapter II., which has already appeared in *A Plea for Liberty*, together with a number of essays by other writers. Part of Chapter VI. has also been circulated by a certain philanthropic society, and various other scraps and pages have appeared scattered abroad in sundry reviews, magazines, and journals. But, taken as a whole, the bulk is new.

WORDSWORTH DONISTHORPE.

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CHAPTER I

Duties Of The State

It is sometimes said that the system of party government is on its trial in this country. Not at all. It is not denied that it has worked well so far; that it has saved English institutions from democratic imperialism; and that no other system known to the historian is capable of doing this. Yet it is asserted that, for some reason or another, the system has reached its highest development, and even passed its zenith; that it no longer serves any useful purpose; and that, in short, it is played out. To begin with, there arises an increasing cry against "partisanship," the "fetish party," and "caucus-despotism"—a cry which is taken up by the more robust and independent political thinkers. The party sheepdogs confess to an ever-growing difficulty in keeping their flocks apart. Cross-voting is on the increase. On every conceivable question, except that with which, for the moment, the existence of the Government is bound up, it is impossible to say beforehand what an analysis of the division lists will disclose. Surprises are frequent. Again, it is becoming daily more difficult to define party names. Thirty years ago no one describing himself as a Liberal would have had the slightest difficulty in explaining what he meant by the term. He would have said, "I am in favour of popular government as opposed to oligarchy." One calling himself a Tory would have said that he disapproved of democratising the Constitution. Nowadays all is changed. We have persons calling themselves Tory-Democrats, and we have self-styled Liberals opposing extension of the franchise.

From this it is clear that, unless a large number of apparently intelligent persons have lost their reason, and talk and think in self-contradictory terms, party names must have changed their meanings. Liberal and Conservative no longer signify Democratic and Anti-Democratic, but something else.

The fact is politicians have been slowly and unconsciously regrouping themselves according to principles as fundamental and important as the old ones, but having little in common with them. Questions of the Constitution of the State have ceased to excite the interest which they formerly did. When the voice of the bulk of the population was stifled, when the will of the few stood for the will of all, other questions paled before the paramount question of representation. Now that the battle has been fought and well-nigh won; now that the old Liberals have obtained all they asked—with the exception of a few minor points which are a matter of time only—questions of State structure have lost their attraction. No large section of the people has much fault to find with the Constitution; and their attention is at last turned to the more urgent question of State function-the question, What ought the State to do? Doubtless some few Liberals of the old school still feel that something remains to be done before the Constitution is really complete and symmetrical. The abolition of the hereditary principle, as embodied in the Monarchy and the Upper House of the Legislature, is enough to absorb the energies of some of these; others point out that even universal manhood suffrage is not perfect democratic equality, so long as women remain

disfranchised. Others, again, resent the interference of a dominant religious sect in the affairs of the nation. While some few, no doubt, are so fanatically logical and so consistently Liberal as to refuse to consider any question of Government duty, so long as a peer under sentence of death may claim to be hanged with a silken rope while a commoner must put up with a hempen one.

But although persons who put these questions in the forefront still exist as survivals from the days when Liberalism was a living religion, a quickening spirit, it is abundantly evident that the main body of political thinkers have long ceased to trouble themselves much about them. “Oh, never mind that, it will come of itself”; or, “It is dying, let it die”; “That is not worth powder and shot, we have other things to attend to”; such are the answers which even advanced party men make to the rump of the old school.

And what is it which casts into the shade the completion of the old work? Foreign affairs? No. Taxation? No; both parties are ready to make the taxpayer bear the cost of the necessary bribery. Religious discipline? No; that salt has lost its savour. Then what is it which diverts the energies of practical politicians from the great work of democratisation? The truth is, that while the battle for equality is well-nigh won, the battle for liberty is hardly yet begun. *The* question of the day is, Individualism or Socialism? Is the welfare of the race bound up with the freedom or with the slavery of the Individual?

Does a so-called Liberal Government bring in and carry a bill forbidding free bargains between landlord and tenant? What of it? A Conservative Government similarly brings in and carries a bill forbidding free bargains between manufacturers and their workpeople. Do Conservatives coerce a citizen to declare his belief in a particular religious dogma, or to forfeit his right to represent his fellow-countrymen? What of it? Liberals similarly, and with equal tyranny, coerce unbelievers to adopt certain medical precautions which appear to them not only inefficacious, but dangerous and dirty. Do Liberals vote away part of the property of urban landowners to build houses for their poorer neighbours? What of it? Conservatives propose measures to compel those who have invested their hard-earned savings in railways to carry the same poorer neighbours at less than cost of transport. Both parties alike agree to prohibit lotteries, lest foolish Yorkshiremen, Jews, Scotchmen, and Quakers, should buy an even chance of winning a shilling for sevenpence. But the plane of party cleavage is readjusting itself. Those who decry State interference are crystallising; those who advocate it to a qualified extent cannot long hold aloof from those who adopt it logically and consistently-the Socialists. The old party ties, based on personal attachments and the memory of old battles, are slackening, as one by one old veterans drop off and are replaced by younger men.

Before we are competent to define the proper sphere of State action with any degree of accuracy, we must survey the whole field covered by officialism at the present day, in this country and in other countries, and in past times. By the use of the comparative method, we shall possibly be enabled to detect permanent tendencies which will guide us in predicting the probable limitations of State action among civilised communities of the future. This work has not yet been done, or even begun, and it may be some

help to those of us who are seriously considering this most important of all political questions of the day, if we cast our eye over the province of Governmental interference in our own country, with a view to ascertaining what substitutes for such action have in various directions been suggested, and how far they are feasible. From a condition of tribal socialism, Englishmen have taken many centuries to attain their present degree of civil liberty, and it is admitted that considerable remnants of the old patriarchal socialism still remain, and are likely to remain (though possibly in diminishing quantities) for many years, decades, and perhaps centuries to come. In so far as such socialism is necessary, because we are not yet ripe for absolute individualism, we are bound to regard it as *beneficent* socialism. It is none the less socialism. It must be understood then that in the following review of existing State interferences, no opinion is expressed on their goodness or badness.

Although there is no particular order in which State functions need be considered, it may be well to begin with those which are admitted by most people to be normal functions, and to pass on to those which are condemned by larger and larger numbers, till we come to those which even socialists would hardly defend.

First, then, we find that the State undertakes the defence of the country against foreign aggression. It maintains at the general expense a costly army and navy. It builds forts and ships, and supplies itself with all requirements in connection therewith. Some persons contend that it should not make its own guns and ammunition; that it should not build its own ships, or construct its own military railways; that it should not even erect its own fortifications; but that it should purchase all such things and services from private persons, under suitable contracts, regulated by competition. Over and above the defence of the country the State goes further; it follows the trade of its citizens to the uttermost parts of the earth, and for their protection keeps up lines of communication along the water highways. It holds other peoples in subjection, partly for their own good, but chiefly for the commercial advantage of Englishmen. Some people think that traders should be left to take care of themselves, to raise and maintain their own armies and fleets, as the East India Company did last century.

The next State function of which the large majority approve is the maintenance at home of law and order; that is to say, the defence of every citizen against the aggression of other citizens, and the enforcement of promises of a certain kind (contracts). With few exceptions, no one disputes the propriety of this State work. The performance requires the maintenance of Courts of Justice and an army of police. The extent to which the State should go in *preventing* crime is keenly disputed. Some, for instance, would prohibit the carrying of firearms; others would allow the storing of dynamite in private houses, leaving the consequences to private responsibility. Recourse has been had recently to spies and informers; some consider this bad, others maintain that it is defensible.

It has become part of the unwritten law of the country, though it is a law which is frequently broken, that the unsupported testimony of the police should not be accepted as conclusive evidence against a citizen unless there is a strong *primâ facie* probability of his having committed the offence with which he is charged. This rule has of late years been disregarded in a special class of cases. It seems to be taken for

granted that anarchists and socialists are *primâ facie* disturbers of the public peace; and when charged with riotous behaviour or obstruction they have with growing frequency been convicted without a tittle of support from outside witnesses, on police testimony alone. I shall not be suspected of any sympathy with socialism. My aim is to counteract the teaching of its advocates, and of those who, without the logical consistency to accept it as a principle, adopt it in practice. For all that, the doctrine is a tenable one. Those who condemn it are logically bound to condemn the whole course of legislation promoted of late years by the neo-radicals of this country, and the National Liberals of Germany. If these politicians are right, then socialism is the ideal towards which we are striving. If they are wrong, then socialism is the *reductio ad absurdum* of their teachings and actions. It is this feeling of unfavourable comparison which causes the halting and purblind State socialists of both countries to hate and detest their more consistent, albeit more extreme and thorough-going *confrères*.

Socialism is an intelligible political theory. I think it is a mistaken one. But I cannot see what is to be gained by trying to stamp it out by brute force. In the case of political and religious beliefs, at all events, “force is no remedy.” Argument must be met by argument, not by truncheons. With Gamaliel let us say, “Refrain from these men and let them alone: for if this council or this work be of men, it will come to naught: but if it be of God ye cannot overthrow it; lest haply ye be found even to fight against God.” Truly if this political theory be unsound, unscientific, Utopian, it will fall to the ground; and if it be true, what is the use of fighting against the inevitable? Surely it is late in the day to have to offer this counsel to Englishmen? Has it not been accepted for generations? One would have thought that religious tolerance, freedom of belief, and free expression of opinion were a part of our Constitution. Whence, then, this sudden and spasmodic effort to trample out a creed (be it true or false) under the policeman's heel?

It will be remembered that some years ago, when this nation was meekly turning the right cheek to Germany after receiving some sharp slaps on the left, a most unprovoked raid was made by the police on a harmless foreigners' club near Tottenham Court Road; a number of Germans were badly knocked about, and some papers and members' books were abstracted in a mysterious manner. It soon became bruited about that the action of the English authorities was dictated from Berlin. It has long been an open secret that the asylum offered by London to political refugees is exceedingly distasteful to the rulers of foreign countries, and that certain exalted personages had made no secret of their determination to force England to join hands with the continental despotisms in “stamping out socialism.” The submissive response of our rulers to this request, or rather mandate, was the raid on the refugees' club. It has since been followed up, year after year, by systematic bullying of the mistaken doctrinaires; whose teachings are so cordially detested, and so servilely accepted and acted upon by our place-hunting politicians. If this foolish and un-English course of action is persisted in, in the hope of stifling this fascinating and fallacious faith, our rulers are grossly deceived and will some day experience a rude awakening.

Let me not be misunderstood; force must be met by force. If those who wish to change the existing order of things are foolish enough to endeavour to do so by violence, while as yet they are in a small minority, it will be the right and the duty of

those who cling to the present order to crush remorselessly any manifestations of brute force. And there is no need to be too tender with disturbers of the public peace. On the contrary, while murder, mayhem, arson and intimidation are resorted to for the furtherance of political aims, prudent measures for strengthening the arm of the law and bringing criminals to justice promptly and unsparingly should meet with general support. But if there is to be a Coercion Act improvised by the Executive in England for the stifling of free speech, let all good individualists take sides for once with the socialists. Let foreign despotisms deal with the desperadoes of their own making. Galls do not grow on cherry-trees nor Caserios in a free country.

On no account whatever should the unsupported testimony of the police be accepted on a charge of solicitation or annoyance. If the person molested or aggrieved does not choose to come forward, it is clear that he cannot have minded it much. To put the whole responsibility on the policeman is not fair to the public, and still less to the police.

It is well known that the toll levied by the police upon public women for liberty (or shall we say license?) is *not* mainly in the form of money. The consequence is that every fresh power conferred upon the police for the worthy object of keeping the streets pure simply amounts to a ticket of admission to a disorderly house. That is the plain English of the matter, and everybody knows it except the dear good curate who takes up the purity crusade in the belief that with a little legislative assistance he can drive vice and crime out of the world. Let us not deride these good creatures. They have cultivated their emotions, religious and humanitarian, at the expense of their intellects, and much as we may admire their earnestness and zeal, we must not allow ourselves to be led by them into absurd and untenable positions.

In short, let us be warned in time. All these well-meant laws interfering with the freedom of adults to choose their own habits of life are fraught with danger. Above all, they tend to bring the law and its officers into hatred and contempt. The most law-abiding citizen will not submit to be knocked about by the police for doing what he himself believes to be his duty or his moral right. Each time such an attack on individual liberty is made by the State, a new recruit is enlisted in the army of anarchy. They are increasing to-day with surprising rapidity. There are daily and loud complaints that the police are becoming too much of a military body. But when we reflect on the allegation we see that it is impossible. The police cannot be too military in the true sense of the word. Organisation, discipline, centralisation—these are the attributes of militarism, and these are just what the police force requires in order to be efficient. But once hand the reins of government over to *mon armé*, and we have the worst form of government known to mankind.

Similarly, and in a less degree, confer judicial, quasi-judicial, and discretionary powers on individual members of the force, and you create an army of petty, arbitrary, and irresponsible tyrants. Every publican, every hotel-keeper, will bear witness how the spies of the Licensing Act have to be bribed off with beer. It is true that it is nobody's interest to drag these things to the light. The victims of this villainy dare not round upon the State sneaks. There is nothing for it but to pay and bear it.

But above and beyond all these detailed arguments, every free man's instinct tells him that it is not only his right, but his *duty* to resist the law to the utmost of his small power, by any means and at all cost, when it interferes with his freedom of action on any other grounds than that he is curtailing the equal freedom of others. Any attempt to swerve from this rule of Anglo-Saxon individualism must inevitably lead to the establishment of a savage despotism on the one hand, and a rebellious anarchism on the other. We are gradually moving in this direction. Law-breakers are becoming heroes and martyrs; the executive and police are becoming unpopular; and law and order are being drawn into general obloquy.

The next State function which very few persons deprecate is the levying of the necessary means for carrying out the above and other Government work. The raising of revenue by any kind of taxation is denounced by Mr. Auberon Herbert, but he seems on this point to be at present in a minority of about a 'bus-load.

I feel a special responsibility for the existence of the scheme of voluntary taxation. The earliest mention of any such system of taxation, so far as I am aware, is contained in a letter which I had occasion to write to Lord Derby at the time of the Patent Law agitation in 1872. Referring to a proposed Patents Board, I there said (2nd November 1872), “The revenue of the Board would be derived entirely from stamps, as the revenue of the State should be; no man being forced to purchase that which he did not require.” Some years later (November 1881) I was associated with Mr. Auberon Herbert in the preparation of a draft constitution for a proposed *Non-interference Union*, a society which, under that title, never saw the light of day. I therein inserted the following clause:—“The revenue to be raised by the sale of different orders of stamps, each stamp entitling the purchaser to some corresponding service rendered by the State in the performance of its legitimate functions.”

Commenting on this in a letter dated 4th November 1881, Mr. Herbert said: “I should like to see Mr. Donisthorpe's plan as regards Government stamps. I think the idea one which might work out into good results, if not too complicated.” But that we did not, at the time, regard the matter in quite the same light is rendered manifest by a note which he appended to the draft clause above cited, and which, though contained in a private letter, I trust it is no breach of confidence to quote. The note runs thus:—“I agree personally with this; but it requires putting into a longer form so as to be generally understood, and express our meaning more definitely. What we mean is this, is it not? To remove the compulsory obligation from all taxes, *except those levied for the purposes of the protection of the individual and the nation*” The italics are mine; but the italicised passage shows conclusively that, at that time, there was no such construction put upon the expression “voluntary taxation.” as that which has been happily described by Mr. Greevz Fisher as the circulation of the hat. My reason for mentioning these matters is that I wish to be entirely dissociated from the scheme in this, its new sense. It is just because voluntary taxation is beginning to be understood by the public as meaning nothing more nor less than the circulation of the hat, that I prefer not to be styled a “voluntary taxationist.”

But there is a further distinction to be drawn. Mr. Fisher, in his very able essay entitled *Voluntary Taxation*, has adopted that interpretation of the term which has

always been the meaning I have myself attached to it, and which may perhaps be more clearly described as Taxation by Stamp. And yet he carries the scheme a great deal further than I am prepared to follow. "When the war drum throbs no longer, and the battle-flag is furled," then the time will be ripe for the system all along the line. Not till then. At present our national expenditure may be roughly divided into three nearly equal parts: (1) interest on the debt; (2) national defence; (3) internal administration. As regards the first two-thirds, it seems to me not only difficult (verging on the impossible) to raise the necessary revenue by stamps voluntarily bought, but also unscientific.

So long as nations war and fight *as wholes*, and not as joint stock companies of individuals, each with a definite share in the concern, so long must the expense be borne and the revenue raised without any attempt to assess the particular advantage derived from such wars by the several individual citizens of the States engaged. It is the easiest thing in the world to find out what I ought to pay to insure myself against loss by fire. It is easy to learn what "tax" I ought to pay to a marine insurance society to guarantee me against loss at sea. I can ascertain the chances against having my bones damaged in a railway accident, and take the odds every time I travel, or once for all each year. I know that it costs about a farthing each on the average to carry letters to all parts of the United Kingdom; and, therefore, I do not grudge the penny which the present company (the State) charges me. And it would be similarly a very simple task to ascertain what would be a reasonable premium to ask for insuring my property against thieves and my person against violence. But it would be impossible to say with even approximate precision how much benefit I have derived from the Anglo-German Convention in Africa, or from the Egyptian Occupation, or the Burmese War. Hence it seems to me that any attempt to tax citizens in proportion to service rendered in *international* affairs would be nothing less than a farce. Taxation (as ordinarily understood) and militarism go hand in hand. When the latter becomes extinct, taxation will become a preposterous anomaly. And so it is now in regard to all matters of internal administration.

We may advocate democracy because it leads straight to anarchy, and yet at the same time hold that the rule for our *practical* guidance is not embodied in the formula, "No Government." Are these statements really inconsistent? Take a parallel case. Addressing a Hindu audience I say I advocate democracy because it leads to civil equality, but that the practical rule of Government in India is not embodied in the formula, "One man, one vote." Surely the road to London is not London. We may rejoice at being on the road to anarchy without considering that we are yet prepared for its complete adoption. I have known persons to live a virtuous life because it *leads* to Heaven, without in the least desiring to be prematurely landed there. "No Government," I repeat, is not a sufficient practical rule for us at the present day. The time will come when it will be, and I rejoice to be on the high road.

Again, it clearly follows that if we are not yet ripe for complete anarchy, we must have an admixture of something which is not anarchy. That something may be called by any name, but as matter of fact it is socialism. So long as this element is necessary, say I, let us have it as good as possible. "If I must have water with my whisky," a friend once said to me, "let me, at all events, have good water." The administration of

a criminal code and the defence of the country against external enemies are, at present, socialistic functions. The latter always will be, so long as there is any need for it at all. The former, *ex vi termini*, is socialistic, for a crime, by definition, is a wrong committed against the State as a whole; but when the criminal law is swallowed up by the civil (and this is the secular tendency), socialism will disappear from this field also. Meantime, since our knowledge of nomology, and its corresponding art, legislation, is too defective to admit of relegating this function to private enterprise, I am not ashamed to say that we must look for the amelioration of society in the immediate future to the strengthening of that organ of society which is charged with the task of punishing crime. While we must have an army, let us have a good army. While we have a post-office, by all means let the department conduct itself on the most approved business principles, and look after the interests of its customers. Even those who would abolish it (and I am one) must admit this. The Criminal Department will for some time yet remain socialistic. While this is so, would it not be the height of folly to weaken and impair the tool with which the work has to be done? Because a savage cannot use a plough, is he, therefore, wise to smash or damage the spade he is compelled to use? I say to him: Make the best of the spade, sharpen it and keep it clean, till the day comes when you will be advanced enough to use a plough. Rejoice that you are on the road to agricultural improvement, and that, at some future time, you will all use ploughs; but for Heaven's sake do not attempt ploughing yet, while you have neither horses nor oxen, and while your fields are full of stones.

We now come to matters of State interference which excite a considerable amount of opposition—rightly or wrongly. A novel claim has recently been preferred to what is called a right to privacy. Let us examine it. How far is the State justified in throwing its ægis over a citizen's privacy? The law of libel lies beneath. All law is a restriction on liberty. It is a peculiarity of good law that it gives more liberty with one hand than it takes away with the other. The reverse is true of bad law. When the individuals of a group are pretty equal in brute strength, it is a clear gain to prohibit the use of brute strength *inter se*. The gains and losses of the fighting all cancel one another in the long-run, and the fighting is a dead loss of power to the community. If a dozen tigers of equal strength, in a wood, would give up fighting one another and would reserve all their fighting power for their prey, it would be an immense economy of force. All would gain by the social compact. Civilised men have made that compact. Individual liberty is curtailed thereby, no doubt. But, at the same time, all are gainers by the arrangement. The *rights* acquired are many times more valuable than the *rights* lost.

The net result of this process is not the same as the result of cutting off a piece at the bottom of a blanket, and sewing it on at the top. It is more like thinning the grapes in a vineyard; whereby the vine is robbed of a great many grapes, but gains a great many more perfect specimens. The total outcome is a larger quantity of fruit and of better quality.

The sum total of the citizen's rights constitutes what may be called the Empire of the Individual. It consists of all those moral or “natural” rights which have not been taken away for the general good, and all those civil rights which have been conferred upon him by the State in exchange for the rights of which he has been deprived. And a

glorious exchange it is for him. Who would sell his civil liberty for the complete unbridled lawlessness of the tiger?

It must not be supposed that the empire of the individual was defined once for all by some social compact, or that it has come to maturity at some past time, and is now definite and unalterable. On the contrary, it is still in a state of growth, like all other products of evolution, Men are continually readjusting the boundaries which separate their fields of activity by a process of give-and-take, whereby all parties gain. Changes in the law do not always result in an all - round gain, because citizens do not always see clearly what is for their own good. But, in the main, the tendency is in that direction. Good laws and customs tend to survive; bad laws and customs tend to die out. The principle of the survival of the fittest applies also in the realm of social ethics. It is well to guard very jealously this growth of ages. When a citizen is asked to sacrifice yet another slice of his liberty in exchange for some greater (promised) blessing, let him think thrice before yielding. There is no need to refuse doggedly and without thought. But even this degree of conservatism would be preferable to hasty acceptance of any proposed change. The experience of ages has, at least, stamped the *status quo* with the hall-mark of genuineness.

It has been said that the limits of the empire of the individual are vague, ill-defined, and debateable. There is a border region where even trained lawyers cannot say whether an alleged right exists or not. There is a whole department of rights of which no one can tell whether they rest on a basis of property or of injury. Take as example the so-called right to reputation. This may be regarded either as part of a citizen's belongings, or it may be regarded as resulting from a general prohibition—from a command addressed to all the citizens by the State *not* to do certain acts roughly classed as slander and libel. Both these views have been adopted, not only by leading jurists, but also by Courts of Justice, with the result that the existing Law touching this debateable region is about as conflicting, inconsistent, and vague as it well could be. Professor Holland goes so far as to group the Right to Reputation with Rights *in rem*. Even Austin is at his worst on this theme. Says he: “Inborn or natural rights (or rights residing in *all* without a *special* title) would therefore fall into two kinds: namely, right to personal security or right in one's own body, and the right to one's reputation or good name.” Black-stone calls these “absolute rights,” though what that means is doubtful, and he includes the right to *health*. Here he is consistent. A man with a bad reputation has as much right to his “good name” as a man with a bad digestion has to his good health. There is something rather comic in both notions. But it is the inevitable result of resting the whole law on a basis of rights. Others would contend that no citizen has the right to store decaying refuse near a neighbour's house, or to tell false tales about him calculated to injure him; the result of such general prohibition being *tantamount* to a right to health and good name vested in every citizen. False generalisations make bad law. Similarly, on the borderland between old-established rights and rights which are only half-admitted, stands the right to what is called “property in ideas.” This right is differently classed in different countries, and by different jurists. Is it, correctly speaking, property at all?

Again, at the present day there comes looming into view a kind of claim to privacy; a right to be left in peace; a right *not* to be dragged into public view. What this right is,

and how it ought to be sanctioned, are questions which two able American lawyers, Messrs. Warren and Brandeis, set themselves to solve in an extremely able article in the *Harvard Law Review* in 1890. And it may be admitted in advance that, assuming the soundness of their premises, the case for the right to privacy is made out. The analysis is subtle and the logic is unassailable. The object of the inquiry is to ascertain whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual—"for securing to the individual what Judge Cooley calls the right to be let alone." Seeing what a tangled web of contradictions, inconsistencies, and absurdities the existing law is, it would be remarkable if a principle could not be extracted from it which might be invoked for the protection of any claim whatever. It is, therefore, not at all to be wondered at that these two able writers have succeeded in making out a very strong case for extending the existing law so as to cover the whole area of what they call an inviolate personality. What exactly this means it would be difficult to define. It is vague; but not vaguer than the rights which the law already professes to recognise. When it comes to the embodying of the principle of inviolate personality in a bill—a task which has been undertaken by W. H. Dunbar, Esq., of the Boston Bar—the difficulty becomes plainer. The result is a break-down. A clause has to be inserted which knocks the bottom out of the "principle" altogether. "Whoever publishes in any newspaper, journal, magazine, or other periodical publication, any statement concerning the private life or affairs of another, *after being requested in writing by such other person* not to publish such statement, or any statement concerning him, shall be punished by imprisonment in the State prison, not exceeding five years, or by imprisonment in the jail, not exceeding two years, or by fine not exceeding one thousand dollars: provided … " It is probable that after the passing of such a Bill, editors would be careful not to forewarn their victim that the public was about to be made acquainted with his domestic troubles, his youthful follies, or his personal defects and foibles. On the other hand, without the clause which I have italicised, the bill would have no chance of becoming law; and if it passed, the press would be reduced to a state of abject paralysis.

Of course, the practical question is whether the good obtained by such an alteration of the law as proposed is worth the cost. Every extension of the law being a restriction of liberty, will the gain in this case outweigh the loss? Before examining the argument of the writers of the article, let us premise that it cuts both ways. It goes far to show either that the law as it now stands should be so extended as to cover the right to an inviolate personality, or that the law as it now stands is bad. If the decisions cited are sound, then the extension advocated is a logical consequent And if the extension advocated can be shown to be inexpedient, the decisions relied on are thereby condemned; or, at least, their claim to acceptance is weakened. Probably Messrs. Warren and Brandeis will admit this; for their whole argument is historical. They begin with a learned account of the evolution of certain ill-defined rights, and they show how these sprang from rights of a simple kind.

In very early times the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the "right to life" served only to protect the subject from battery in its various forms: liberty meant freedom from actual restraint, and the right to property secured to the individual his lands and his cattle. Later there came a recognition of man's spiritual nature, of his feelings and his intellect.

Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession—intangible as well as tangible.

We are then conducted down the stream of legal evolution. We are introduced to the first reported case where damages were recovered for a technical assault; to the rise of the Law of Nuisance; to the earliest case of an action for slander; to the first recognition of copyright in England; to the first recognition of "goodwill" as property; and to the first steps towards State protection of trade-marks, trade secrets, and patented inventions.

Our guides then point right ahead into the future. After a graphic description of the processes which the resources of civilisation have already furnished, and are about to furnish, for the torture of private persons—such as instantaneous photography, the phonograph, society journalism, etc.—they ask us to consider "whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual."

This brings us at once to the contemplation of the existing law. The writers seem to be in some doubt as to what class the right to privacy should fall within. Therefore, they prudently try both. First, they regard the right from the point of view of the recognised rights to compensation for injured feelings. Finding the position untenable, they fall back on property.

It is not, however, necessary ... to invoke the analogy, which is but superficial, to injuries sustained, either by an attack upon reputation or by what the civilians called a violation of honour; for the legal doctrines relating to infractions of what is ordinarily termed the common-law right to intellectual and artistic property are, it is believed, but instances and applications of a general right to privacy, which, properly understood, afford a remedy for the evils under consideration.

After this admission, it is hardly necessary to follow them through their examination of existing law dealing with injured feelings; more especially when we reflect that mere injury to the feelings taken by itself, and without other ground of action, is not recognised by our law. Even the wounded feelings of a parent, whose daughter has been dishonoured, can be considered only under the vulgar fiction of loss of service. We are thus driven to derive the right of privacy from the law relating to property—especially what is called incorporeal property. And the first form dealt with is a man's right to his own ideas, sentiments, and emotions. "Under our system," we are told, "he can never be compelled to express them" except in the witnessbox. True; but how far does this carry us? It certainly does not prove his proprietary right. But even if he has chosen to give them expression, we are further told that "he generally retains the power to fix the limits of the publicity which shall be given them." Now I must meet this with a denial. It is quite true that certain judicial decisions lend colour to such a contention; but, for the most part, these decisions are of little weight. The case mainly relied on is that of *Prince Albert* v. *Strange*, and the decisions both of Vice-Chancellor Knight Bruce and of Lord Cottenham (on appeal) are extensively

quoted. But both, having served their abject purpose, might now, one would think, be allowed to fall quietly into deserved oblivion. Certainly it is not in America that we should have expected to see them cited with approval. And in most of the other cases cited in support, the decisions seem to have been based on improper grounds—even when good in themselves.

Take the case of private letters. It is true the law on this subject is Not only vague, but contradictory. It has been held that the writer of letters retains such a property in them that they cannot be published without his consent. But this is an absurd straining of the law. See whither it leads us. “A man records in a letter to his son, or in his diary, that he did not dine with his wife on a certain day: no one into whose hands those papers fall could publish them to the world, even if possession of the documents had been obtained rightfully.” So say Messrs. Warren and Brandeis. And they go further. They say that it is not merely the arrangement of words which the law protects, but “the fact itself.” Surely this is intolerable. Where is the sanction? Such a law would give a scientific writer copyright, not only in his book, but in the discoveries and theories contained in it. One could not discuss the evolution of law, for example, without paying tribute to Mr. Herbert Spencer for the use of the knowledge given to the world in his *First Principles*. I am far from pretending that the publication of the fact of the letter-writer not having dined with his wife might not be actionable. It might fall under the head of defamation, or of breach of contract, or of confidence (implied contract), or of trespass (when access to the information was improperly obtained), or of agency. In any of these ways the publication might be actionable, but not as an invasion of proprietary right. “Suppose a man has a collection of gems or curiosities which he keeps private; it would hardly be contended that any person could publish a catalogue of them.” Indeed it would. How could such a publication be objected to, except on the ground that access to the knowledge has been improperly obtained?

As for Lord Cottenham's vacuous remark—it is nothing else—that a man “is entitled to be protected in the exclusive use and enjoyment of that which is exclusively *his*”; it only wants translating into plainer English thus: “A man is entitled to be protected in the exclusive use and enjoyment of that to which he has the right to the exclusive use and enjoyment”; and we have an identical proposition of the most elementary kind.

If unpublished manuscripts were really and truly property, it is clear they would form part of an insolvent's assets—which they do not. Nor can they be seized and published by his creditors without his consent. This is admitted. There can be little doubt that the proprietary rights of an inventor or writer are based on a contract between the State and himself. He possesses a valuable secret. Unless the public guarantee him a reward, he will not part with his secret. The question for the legislator is: What is the amount and kind of reward which is best calculated to stimulate invention and literary talent for the good of the community? If the secret of alleged value turns out valueless, no one is hurt.

The best instances in which the publication of other people's ideas, etc., has been held to be improper, are those in which there has been a breach of trust or of confidence. Where a clerk gives information as to his employer's books; where an engraver makes

a certain number of copies of a picture to order, and then makes some more for his own use; where a visitor to a factory copies some new secret process; where a shorthand writer attends a series of private lectures and publishes his notes; where a doctor's assistant makes use in his private practice of secrets learnt in his principal's laboratory—in all such cases there is a breach of trust or of implied contract. In *Pollard* v. *Photographic Co.* (cited), a photographer was restrained from exhibiting or selling copies of a lady's photograph which he had taken in the ordinary way of business. But it may be doubted whether Mr. Justice North did not lay too much stress on the breach of implied contract. It may be maintained that the negative is the *property* of the sitter, and that the photographer retains it in his possession as the agent of the sitter. Reference to the customs of the trade would give support to this view. Here the photographer was in the position of a pawnbroker who should take advantage of his possession of another man's painting to get it engraved and to sell the engravings for his own profit. But to say that a photographic negative is the property of the sitter who pays for it is very different from saying that every person has a proprietary right in his own features. And yet this is what we are asked to claim—"a general right to privacy for thoughts, emotions, and sensations, whether expressed in writing, or in conduct, in conversation, in attitudes, or in facial expression." Surely the legal recognition of any such right as that demanded would be a loss rather than a gain to liberty.

The State holds itself responsible for the qualification of certain private workers. Persons who wish to practise medicine and surgery, to sell drugs, to lend money on pledges, to deal in second-hand metals, to sell alcoholic liquors, tobacco, or "game," to plead in the courts, to mind engines, to carry on a variety of other occupations, must satisfy the State that they are properly qualified by education or respectability or both. Some think that if the Bar, for example, were thrown open, the public would easily judge for itself as to the competency of the competitors, just as it now does in spite of the Government certificate. The same argument is applied to medicine. Due responsibility for culpable negligence would, it is said, suffice.

And the State carries on many works also on its own account. It carries letters and parcels, and sends telegrams. Some point to the fact that the telephone companies, which are private, are much more cheaply worked than the telegraphs, and deduce the natural conclusion from the observation. Others point to the high charges which private carriers made for letter-distributing before the State took up the work and claimed the monopoly.

A dozen years ago, in America, when letter postage was still three cents, Messrs Wells, Fargo, and Co. were doing a large business in carrying letters throughout the Pacific States and Territories. Their rate was five cents, more than three of which they expended, as the legal monopoly required, in purchasing of the United States a stamped envelope in which to carry the letter entrusted to their care. That is to say, on every letter which they carried they had to pay a tax of more than three cents. Exclusive of this tax, Wells, Fargo, and Co. got less than two cents for each letter which they carried, while the Government got three cents for each letter which it carried itself, and more than three cents for each letter which Wells, Fargo, and Co. carried. On the other hand, it cost every individual five cents to send by Wells, Fargo,

and Co., and only three to send by the Government. Moreover, the area covered was one in which immensity of distance, sparseness of population, and irregularities of surface made out-of-the-way points unusually difficult of access. Still, in spite of all these advantages on the side of the Government, its patronage steadily dwindled, while that of Wells, Fargo, and Co. as steadily grew. Pecuniarily this, of course, was a benefit to the Government. But for this very reason such a condition of affairs was all the more mortifying. Hence the postmaster-general sent a special commission to investigate the matter. He fulfilled his duty, and reported to his superior that Wells, Fargo, and Co. were complying with the law in every particular, and were taking away the business of the Government by furnishing a prompter and securer mail service, not alone to principal points, but to more points and remoter points than were included in the Government list of post-offices. Similar attempts in London have been ruthlessly stamped out.

It is a mistake to suppose that the Conservative party is less under the influence of socialistic ideas than its rival. On the contrary, its socialism takes another form. It does not perhaps rob the rich to give to the poor, but it is equally ready to strangle private enterprise and to substitute State machinery. Here is a specimen of Tory socialism from the *Morning Post*:—

In the commercial progress of the last five years England takes the penultimate position amongst the eight leading industrial nations of Europe. That is our position now, and unless we realise it and remedy it, we shall be forced to the startling conclusion that England's day is gone. Various remedies are of course proposed. Various causes are pointed out as the efficient cause of our apparent decline with more or less plausibility; and various more or less wild remedies have from time to time been advocated. But there is one proposal which alike touches the cause and points out the remedy for all our woe, and it is one which is happily forcing itself upon the mind of every thinking man. It is the State purchase of railways—a startling idea of enormous magnitude, but also one of enormous potentiality. The more familiar the idea becomes, the more it grows upon us.

Listen to the several arguments adduced in favour of this wildest of socialistic remedies. First, there is the analogy of the Postal and Telegraph systems; “when they were first contemplated by the State, these excited just the same opposition, just the same prophecies of ill-omen as this idea of the State purchase of railways is now exciting, yet in these cases every objection has proved to be groundless.” Indeed; individualists have arrived at a different conclusion. The telegraph business has been a losing concern from the first, and not a day passes without some exposure of the misdoings and extravagance and inefficiency of the Postal Department.

The next argument is a little dogmatic, but not more so than the occasion demands: “It is all very well to talk about interference with vested interests and socialistic robbery, but neither principle is really involved.” That settles the matter. Individualists say the State purchase of the railways is a socialistic measure. To which the *Morning Post* replies: “It is all very well to say so, but it is not.” The argument is a strong one, but let us pass on to the next. This consists in stealing weapons from the enemy's armoury. “Self-help” sounds well, even though the Tory socialist has no conception of

the thing itself. “Is not, then, this latest idea of national self - help worthy of all careful consideration?” National self-help! The mind of the writer who penned that phrase seems to stand somewhat in need of a little State - help. Lastly comes the characteristically un-English argument from Continental example. If you want to know how to conduct your affairs, look across the seas. This is the new-fangled notion. Look at the *police desmœurs*. Why cannot we have them? Look at State-subsidised theatres and concerts in France and Germany; why cannot we have them? Look at the French Academy. Why not an English Academy? So the *Morning Post* quotes with approval the words of a French railway magnate: “Everywhere there is an increasing objection to leaving in the hands of private enterprise, however respectable it may be, the solution of questions which exercise such a weighty influence on the economical development and industrial life of the country.” No doubt this is the belief in the minds of the State-coddled creatures across the Channel—the majority of them. But it is not an increasing belief in England, except among that hopelessly conceited set of Constitution mongers who picture themselves as the Governors, and other people as the governed. If the staff of the *Morning Post* had control of the railways, no doubt tariffs would be lowered and dividends raised, there would be fewer accidents, and—, etc. But seeing that State departments do not as a rule fall into the hands of genius, but into the hands of ordinary officialdom, we must put aside this Utopian vision for the present. Twenty years ago about a fifth of the Continental lines belonged to the State. Ten years ago the State held a third; to-day more than half the Continental railways are under Government control. Probably the transfer of the entire system to the State is, as the organ of Tory socialism says, merely a question of time. In England this desperate consummation sinks further and further into the background—to the great grief and disappointment of the socialists. Says their Tory organ:—

While the position of each other nation becomes daily more favourable, our own is exactly the reverse. Each year the State purchase of our lines becomes more difficult, and the price to be paid higher; each year that inversion of the fitness of things, the management of the State by the railway companies, becomes more complete. The case is precisely analogous with that of the water companies. When Mr. Cross brought in his bill for the purchase of these properties, the Government might have had them at an enormously less cost than will now have to be paid, but the opportunity was missed. So, in 1870, the English railway companies might have been bought out for, £500,000,000 or, £600,000,000; now the cost to the country will be something like, £1,000,000,000. Yet the price must be paid sooner or later.

The Social Democratic Federation, which carries the principle of nationalisation a little further than the *Morning Post* and the Tory branch of the party, maintains that the mines are also in an analogous position. And pray why not? Also the factories and ships and gasworks, not to speak of agricultural and urban land. Probably this hybrid product of a degenerate age is prepared to furnish clear and irrefragable reasons why the State should nationalise these agents of production, and why it should *not* nationalise those. What they are I do not know. As yet they lie fathoms deep in the editorial consciousness.

"Look at the Indian State Railways." Well, to begin with, the more we look at them, the less we like them. But supposing that they could favourably compare with railways created and worked entirely by private enterprise (which they cannot), even then the comparison would be grossly unfair. Seeing that the State, by a straining of an Act of Parliament which verges on sharp practice, contrives to shirk dock and harbour dues on all materials shipped from this country to India for the purposes of State railway construction, the contest is not an even one, but a most unfair handicap. Why the State should enjoy protection more than any other firm of railway contractors is a question which can be answered only on the socialistic hypothesis that it can do the work better and more cheaply than any other firm; coupled with the further proposition that, in order to enable it to do so, it requires to be bolstered up and protected against competition. The two theories do not look well side by side.

Then the State examines poetry and chooses, or did till lately choose, the best poet as the Laureate. It studies astronomy on its own account, and appoints an Astronomer-Royal. It undertakes scientific expeditions and (some ten or twenty years after) publishes reports of them. It vies with private enterprise in its efforts to get to the North Pole. It collects pictures and books and objects of antiquarian and scientific interest, and stores them in national museums and galleries. It keeps up botanical gardens, and also gardens for simple recreation. All these things may be regarded as national, and not calculated to benefit any particular class of persons at the expense of the others. In some quarters it is objected that these matters would be attended to by private enterprise if it were not for State competition, and better managed.

Individualists are generally confronted with the argument that but for State action it would be impossible for the inhabitants of large towns and populous places to enjoy the luxury of public parks and gardens. Hyde Park and Kensington Gardens would, sooner or later, fall into the hands of speculators in brick and mortar. Those who accept this view of the helpless condition of organised communities should read the annual reports of the Metropolitan Public Gardens Association, which show what private enterprise is capable of effecting.

It is pointed out that the *Polaris* Expedition effected more than the British Expedition under Captain Nares at less than a tenth of the cost; and that the report of the *Challenger* Expedition is still very far from complete. On the other hand, it is contended that no private library can compare in any respect with that of the British Museum. Similarly, it is said that private individuals could never have kept such recreation grounds as Epping Forest out of the hands of the builders for the good of the public health.

What is the duty of the State in regard to the assemblage of considerable numbers of persons, orderly or disorderly, or presumably about to become disorderly? Freedom of public meeting is a heritage for Englishmen not only to be proud of, and, if need be, to fight for, but it is also, it seems, a shibboleth to go mad upon. No one disputes the right (long since battled for and won) of the inhabitants of these islands to meet and discuss their grievances in public. Any attempt on the part of the State to say to any set of persons, "You shall not meet anywhere for the purpose of discussing such or such a question," would be a violation of the unwritten constitutional law of this

country, and an act of despotism which would rightly be met by the forcible resistance of all free men. But consider what this right implies, and what it does not imply. Probably few would pretend that the licensed victuallers have a right to hold a monster meeting in the middle of the Strand at mid-day to ventilate their grievances under the Licensing Acts. The most strenuous advocate of the "land for all" would hardly allow a tribe of gipsies to pitch their tents for a week in Oxford Circus. Then, to take a historical case, by what right did "the unemployed" in 1887 claim to hold Trafalgar Square day by day for weeks together? Not by the right of public meeting. They had been told that they could meet in any suitable place, out of the way of traffic and trade. Hyde Park was so free to them that they scorned to use it. Was it by right of immemorial custom? Trafalgar Square has been a recognised place of public meeting for a long time; it is handy of access, has plenty of room, and contains nothing that can be made the instrument of riot or the subject of destruction—no loose stones or tottering railings. One would pronounce the Square in all respects a suitable corner for a lawful public meeting. Anyhow, the chief of the metropolitan police took a different view (based, for all I know, upon other grounds) and proclaimed the meetings. He applied for the assent of the people's representative, that is to say, the Home Secretary, and obtained it. This put the organisers of the riot altogether out of court. He also applied for and obtained the approval of the Commissioners of Public Works and Buildings, though it is difficult to see what they had to do with the matter, unless it was seriously supposed that Nelson's Column and the National Gallery were in danger.

Such being the facts, there can be no doubt that it was the duty of those who thought Sir C. Warren had taken a mistaken or an arbitrary view as to the fitness of the Square for public gatherings, to raise the question first of all in a peaceful and parliamentary way. We outsiders are inclined to think that Trafalgar Square is a particularly suitable meeting ground. We have many pleasant associations with the place; we recollect many important and public-spirited meetings there; and, moreover, the right of the public to assemble in it has been undisputed for so long a time as to have hardened into a prescriptive title. But there is a lawful and unlawful way of defending even our admitted rights. For example, a mistake is made in the parcels-office of a railway station, and a passenger's claim to his own portmanteau is disputed. He is not at liberty to bounce into the office, knock the clerk down, and carry off his own goods by brute force. So we must condemn the action of those who ought to know better, and who goaded on the mob to effect by violence what probably could even then have been, and eventually was, attained by lawful and peaceful means.

It would be interesting to learn *how far* the noisy champions of public meeting at any price are prepared to go. Would they allow a gathering of anarchists, convened for the avowed purpose of organising and planning the destruction of London? One would also like to know how far the chief of the police was actuated by the consideration that the Trafalgar Square meetings were openly convened by persons who made no secret of their intention to act unlawfully, and who did, as a fact, use seditious language. If this was his chief reason (or the Home Secretary's chief reason) for putting an end to the daily assemblages, it would have been better to base the prohibition on the true ground, rather than to rely on the mere technical argument as

to the rights of the dwellers in the neighbourhood, which have long since been forfeited by adverse use.

Several hundreds of men parade the streets with a banner bearing the by no means strange device, “We've got no work to do.” They also appoint a deputation to wait upon the Mayor, who usually seems somewhat panic-stricken, or, at least, unprepared. He promises to bestir himself with all speed, and to wake up his fellow-councillors. In spite of this, the police carry off the banner, to place it no doubt among their trophies of victory. But here, as in all great tragedies, the humour lies upon the surface. All the nonsense talked, all the bombast bellowed, all the flummery and buffoonery of ignorant processionists, and “armies” of one sort and another is a mere superficial scum which rises to the top and serves no other useful purpose but to show the expert what quality of metal lies beneath—its composition and its temperature.

Where there is smoke there is fire, so it is said; and only the careless and unobservant can express a doubt as to the existence of real and terrible distress among the working classes all over the world at the present time. There are economists who are ready to say, “True, at such times the fit must survive, and the weak must go to the wall; it can't be helped, and therefore it is no use talking.” But this is hardly an argument likely to commend itself to the classes who are chiefly interested in the problem. Besides, is there not a weak link in it? Doubtless the unfit will be eliminated, and the fit will survive. But is it quite certain that under existing arrangements it is the absolutely unfit who go to the wall? At any rate, it is an open question. That they are the unfit under the present system of industrial organisation is proved by the fact that they are short of the means of subsistence. The unfit are those who fail. Shipwrecked on a desert island well tenanted by wild beasts, who would be the fittest in the following crew—Socrates, Seneca, Shakespeare, Spenser, and Sykes (the world-renowned Bill)? I would venture to take Bill for choice. But transplant them to another country, under another and a higher social system, and Sykes takes rank with the unfit, and is forcibly or indirectly eliminated. Is it not possible that under a better system of industrial organisation many of those whom the callous political economist stigmatises as the unfit might turn out to be the cream of the race? Then let us look well to the system before we rashly assume that it is the only possible one, or even the best Meanwhile the unfit, or the unfortunate—as the case may be—are acquiring knowledge, strength and organisation. Unless we are prepared to satisfy them that the unjust is the just—or at least the inevitable—we had best look round and see how justice can be done. The stronger to-day may not be the stronger to-morrow.

It is but natural that uncultivated men should attribute their own want to the heartless greed of those who apparently have enough and to spare. They cannot know or even guess how short a way the whole of existing wealth would go if divided amongst the masses to-day. The whole rental of Ireland would give but ninepence a week to the Irish population per head. One day two socialists called on a German millionaire claiming an equal share in his great wealth. “Very true,” replied the Baron, “and very just. I have forty millions of marks: the population of the country is forty millions. Your shares, therefore, will be one mark each. Here you are, gentlemen. Good morning.” Seriously, the total consumable wealth and exchangeable wealth of England would not, if realised, keep the population in idleness for more than two

years, or three at the outside. The present depression, then, is not to be attributed to the accumulations of property owners. The fact is, we cannot eat our cake and have it. If we are to have short hours, at a cost of a hundred million pounds a year, as we have, and Unionist quality of workmanship, as we have, we must expect that our gross receipts for work done will be less than they used to be, and will grow less and less year by year. Not volume of trade, not prices, not rate of wages, are the test of a nation's prosperity, but a high rate of general profits. This has not obtained in England since 1873. Signs are not wanting of a revival, but so long as we remain handicapped as we now are by State restrictions on labour and contract, our old commercial pre - eminence can never be regained. And the workers will go on starving.

But beyond these national institutions, the State undertakes to provide others which benefit one class at the expense of the remainder: it maintains local baths and wash-houses, free libraries and free schools; and it builds dwelling-houses for certain classes of persons. It is contended by the advocates of these State institutions that, although one class is primarily benefited, the whole community derives indirect advantage from them. Individualists, on the other hand, urge that private enterprise will, in the absence of Government competition, supply enough to meet the demand, and that more than this is detrimental to the public welfare. It is also said that the quality of the supply is thus stereotyped and private initiative crippled.

The advocates of rate-supported libraries would do well to offer an opinion on the desirability of rate-supported theatres. Mr. Henry Irving is an actor. Acting, to be effective, requires theatre accommodation. Theatres cost money. Money which might conceivably pass from the pocket of the theatre-goer into the pockets of the actor, is much of it somehow intercepted by the owners of theatres. Hence what more natural than that Mr. Irving should propound to the good people of Glasgow his theory of theatre nationalisation? He has no doubt, he says, that the time will come when every municipality will have its own theatre. The people will no longer be dependent on the selfish middleman who now taxes them so heavily. Then will the stalls be half-a-crown and the pit sixpence. The playgoer will pay less, and the player will receive more. Truly a consummation devoutly to be wished!

Mr. Irving was asked who is to pay the difference. Somebody must pay it; unless we assume that the providing of theatres is a branch of industry which has not yet found its level. If so, then capital must be constantly flowing into it, and the average profits of the undertakings must be high. But we do not find that this is so. Owners of such property grumble and declare that profits are low, and indeed we seem to see more failures among the lessees of theatres than among any other class of speculators. We are, therefore, driven back to the conclusion that we are not the victims of a theatre monopoly, as some people pretend; that there is free trade in the article, and that average profits are not above the normal. Consequently, if public and player are to receive more than they now do, it must be because somebody is to pay that difference who at present escapes it. Of course in the case of municipal theatres that somebody is the ratepayer. If all ratepayers went to the theatre, the evil of following Mr. Irving's advice would be similar to the evil of establishing borough gasworks; and the Salford people know exactly what that is. But all ratepayers do not go to the play. The majority probably abstain from that luxury. Hence Mr. Irving's advice amounts to

telling the playgoers to tax the non-playgoers, and to spread the expense all round. The reading public have already effected this manœuvre, and charged their expenses on the non-reading public by means of the Free Library Acts; but then they *are* the majority, and have brute force to rely on; and it may be doubted whether Mr. Irving's art can count on a majority in any of our big boroughs yet. When it can, Mr. Irving tells us he has in his pocket a plan of a theatre which is everything that can be desired. It wili not burn. It is splendidly ventilated and illuminated. Everybody can see the stage, and so on. Then let him build it. I for one shall be delighted to take shares. Here is Mr. Irving's answer:—

Sir—In reply to your comments on a recent speech of mine, I would simply say: (l) That a well-conducted theatre is as necessary as a free library; (2) That if the question were put to the vote, a majority of the ratepayers, I believe, in large towns would support such a theatre; (3) That whereas a free library is a charge to the ratepayers because it is free, a theatre would not be free, but, if properly managed, would be a paying speculation. The municipality might safely guarantee at least 4 per cent.—Yours faithfully,

Henry Irving

Theatre-Royal, Manchester.

I quite admit that a good theatre is as necessary as a free library—nay, far more so. Indeed, the lasting and true educational effect of the work done at the Lyceum Theatre alone during the last few years, has been more potent for good than all the free libraries in the country. But then this is saying too little; because in all probability no good whatever has resulted from the Free Library Acts, and much mischief. Bought goods are cheaper than stolen. And this saying applies just as fitly to the use of books or the enjoyment of the drama, as to the satisfaction of the baser appetites.

If Mr. Irving's second contention be sound, which is quite possible, I fear the demand svould be for a quality of entertainment which Mr. Irving himself would hardly care to provide. And in any case, if the majority of ratepayers really want a good theatre, they are wealthy enough to provide themselves with one without taxing the minority for its support. No doubt a thoroughly good theatre constructed on approved principles, such as Mr. Irving's experience could design, and conducted on sound and healthy lines, would in most large towns pay 4 per cent, and perhaps a good deal more. Then why cannot some persons with a love for the drama combine philanthropy with business, and plank down the money for a first start—say in Manchester? It is high time something of the kind was done, for the public is getting rather sick of fires and panics in theatres. There is not the smallest need to apply to Great National Pickpocket.

Commenting on this correspondence at the time the *Manchester Guardian* said: “A municipality would be justified in undertaking a theatre, if such were the desire of the majority of the ratepayers.” This is a bold assertion. No reason is given. It might have emanated from the Vatican in the Middle Ages. Perhaps the only way to meet such a dogmatic statement is this: A municipality is *not* justified in undertaking a theatre,

even if such were the desire of the majority of the ratepayers. If the *Manchester Guardian* would condescend to argument, I would ask whether the proposition is a deduction from the general statement that the municipality is justified in undertaking anything whatever when such is the desire of the ratepayers; or whether it is based on some peculiar attribute of theatres which renders the proposition axiomatic. But on a question of this sort one cannot accept the *ipsedixit* even of so ably conducted a journal as the *Manchester Guardian*.

The State is asked by some to distribute the population in accordance with the fertility of the soil and the production of the district, by what is called State emigration, or State-aided colonisation. This is strongly opposed by the majority, which maintains that population distributes itself most economically when left to itself. But the same majority approves of so distributing wealth that those who have shall contribute something towards the maintenance of the utterly destitute. Some contend that the levying of a poor-rate is in response to a legal and moral claim on the part of the poorest section of the community—*a right* to live. Others say it is a tribute to the national sentiment, the offspring of pity, and in the same category with the laws against cruelty to animals; while others again defend the poor-laws as a safety valve against revolution, and without any other justification.

Both emigration and immigration are attracting attention just now. How ought the State to deal with these questions? Socialists (who believe in the equal rights of man) consider it unfair to exile a proportion of the workers in order to leave more room for the idlers; and, moreover, they hold that, under a fair distribution of wealth, England is capable of supporting a much larger population than she now does, and in a superior state of frugal comfort. That is why they oppose State - aided emigration.

Individualists oppose it, first, because for the sake of argument, supposing emigration in itself to be a good, even then they are satisfied that the State would manage it extravagantly, ruinously, and badly. Furthermore, they know that it can have no effect whatever in relieving the home labour market. Assuming that a million persons have been removed within the last twelve years, and accepting Euler's calculation that civilised populations, if unrestricted, will double themselves in twelve and a half years, they perceive that it would have been necessary to remove not one million, but fifteen million persons in that space of time, in order to relieve the labour market at home. Moreover, they contend that State emigration must be directed towards removing either the skilled and efficient, or the unskilled and inefficient. If it means "shooting" our breakages on to foreign shores, there to perish, it can hardly be called a humanitarian movement. It might reduce our poor-rate slightly and temporarily at a greater cost to the taxpayer (who is almost the same person as the ratepayer); but it would not benefit the exported; nor would it benefit the countries receiving the unwelcome guests; nor would it ease the drag at our own wage-fund. But if it means exiling our skilled workers to enrich the labour markets of other countries, and to leave us the inferior, then, again, we protest; we prefer to see the fittest survive at home, and the race gradually improve in consequence. Take the case of the Chinese in America, which is analogous to that of the Russian Jews in this country. No one is compelled to enter into family alliances with the Chinaman, and so, apart from choice, there is little danger of injuring the race by a feeble strain. That, indeed, is not the

objection usually urged. It is said that Chinese competition lowers the value of the American labourer in the market. The Chinaman underbids him, to which the reply is, so much the better. If the Celestial is the better man of the two, the sooner the American goes to the dogs the better. But he is not better, say the advocates of interference; he is worse; nevertheless he can do certain kinds of unskilled and even skilled work as well as we can, and at a cheaper rate. Very well, then, he is the better man for those purposes. Let us leave those kinds of work to him, and set to work at something "higher" ourselves. To take a parallel case. Horses lift, carry, and pull loads; if there were no horses, asses, oxen, other beasts of burden, or engines, it is clear that men would be required to do the lifting, carrying, and pulling themselves, just as they did under the Pharaohs who built the Pyramids. Every horse in the land turns out of work from half-a-dozcn to a dozen unskilled labourers who would otherwise fill its place. The horse is the heathen Chinee: with equal justice and wisdom he ought to be knocked on the head. Unless Man is prepared to admit that he is worth less than a horse or an ass, let him prove his superiority by earning more in fair competition, not by crushing out his competitor by brute force. What iron and steam and brute beasts can do, Man should be above doing. And what Chinamen can do, Anglo-Saxons should be above doing; they are fit for something better. Leave the Chinaman alone.

Of course socialists beg the question as to the propriety of stopping competition by pushing the Chinese on one side, A fair trader contributes to a socialist paper this syllogism. "It is wrong to admit Chinese labour into an English colony, because so to do is to bring low-paid labour to compete with high-paid labour. But to bring goods made by low-paid workers abroad into this country to compete against the home-made goods of our high-paid workers, is to tolerate such competition. Hence free-trade is a fraud." I accept the logic, but deny the major premise. Hence the conclusion falls. The same writer is consistent enough, and foolish enough to quarrel with machinery. Let Americans either break up their iron rivals, or leave John Chinaman to carve out his normal vocation in hope and peace. Similarly, let Polish Jews do work in East London unfit for Englishmen.

Again, the question has been keenly debated whether the State is warranted in stepping in between a citizen and his own animals in the interests of humanity. Some say these matters may safely be left to the social sanction and the growing conscience of the Race.

Other State interferences may be classified under the heads of sanitation, morality, religion, and justice. Whether individuals should be allowed to dispose of their sewage as they think fit, or should be compelled to adopt some general and approved system; whether they should be forced to adopt certain medical precautions in the general interest, such as those required by quarantine laws, Vaccination Acts, Contagious Diseases Acts, notification and compulsory removal laws and the like; whether they should be allowed to build according to demand, or according to rules like those contained in the Metropolitan Buildings Acts; whether such matters as smoke abatement should be treated as questions of mere private nuisance; whether the dead should be disposed of according to the fancies of their surviving relatives, or on some State-ordained system; whether private persons should be permitted to use and

also to abuse public waters by polluting them until such time as they see the necessity of combining to keep them pure; whether the makers and vendors of goods, drugs, beverages, etc., should be untrammelled by any other law than the maxim *caveat emptor*, or whether the State should analyse these commodities, and punish adulterators; upon all these questions of sanitation and a hundred others of the same kind, opinions differ. I shall devote a separate chapter to the discussion of the adulteration question.

In the interests of Morality, some contend (an enormous majority) that the State should punish bigamy and practices inimical to monogamy, and should prescribe between whom marriages should lawfully be sanctioned. Some of those who admit this, contend that the State is needlessly strict in its prohibitions, *e.g.* in the case of marriage with the sister of a deceased wife. Some of those who would allow young girls, against their inclinations, to be sacrificed to the greed or ambition of parents or guardians, provided the contract is one of marriage, deny the sufficiency of parental responsibility in the case of similar contracts of a temporary character, even when the young person is a consenting party. This question also is discussed in a separate chapter. Opinions widely differ as to how far the State is warranted in sharing the responsibility with parents, and in standing *in loco parentis* with respect to orphans. It is also debated whether the suppression of brothels other than disorderly houses is, properly speaking, a State duty; and the same difference extends to the question of public-houses, where drunkenness may (or may not) result in disorder and nuisance. In the interest of morality, the State exercises censorship of plays, though it has not been deemed necessary to continue the precaution in the case of light literature.

What are the conditions under which it is permissible to publish prurient, obscene, and filthy matter in the daily newspapers? As revolting a hash as ever was served up to the public was defended, not so very long ago, on the plea that it was done with the laudable intention of enlisting public opinion on the side of virtue, in an attempt to sweep away one of the more horrible features of society in "Modern Babylon." I have no intention of reopening this question of motives. The solid fact remains that thousands of young persons were daily dosed with garbage, which must have had some effect upon them of an injurious character. At the time a great outcry was raised against the journal in which these disgusting "revelations" appeared—an outcry, which must now be attributed to the jealousy of those other journals which had no share in the monopoly. That this is the true explanation of the chaste wrath of the majority of the leading newspapers is rendered probable from the fact, that ever since, nearly every one of these same righteous newspapers has ever and anon contained several columns daily of prurient stuff, not one whit less objectionable than that which they condemned. The only difference is that one was a monopoly, while the other was the common property of the press. It is not even pretended that divorce court "revelations" are published for the public good. Not a bit of it. They are not even of public interest. Much stress is laid on the distinction that, whereas the Babylonian narratives were fiction, the divorce court narratives are fact. But this is an irrelevant distinction, quite apart from the fact that in many cases the latter are as *ben trovato* as the former. Is it contended that it is expedient, as a rule, that all persons should have a fair and open trial, and that any attempt to hide the facts from the public would make it easier to corrupt the jury or the Court? That a trial without public report would

approximate to a trial *in camera* without consent of parties? There is an obvious reply to this. There could be no conceivable objection to the publication of all cases in the technical journals. Medical papers deal with matters which would not be tolerated in papers of general interest. Why should not the same rule apply to legal matters? By all means let the law journals report any and every case of legal interest. But why those who give a penny for the day's news of public and general movements, should have palmed off upon them the nasty gossip and filthy scandal of private families and their mischief-making servants, passes all understanding. Those who are curious in such matters, those who have a personal interest in the parties concerned, as well as those who have to study the question as a rather repulsive case of social pathology—viz. the lawyers—can be trusted to take the trouble to obtain the law papers. Those who do not wish their families to be supplied with Holywell Street literature, have a right to be protected against its subintroduction each morning in the guise of public news. But, of course, any State interference with the freedom of reporting cases in our Courts of Justice would be intolerable, and moreover would be beset with many and grave difficulties: but in my opinion, any leading daily paper which should issue a poster with the item "No Report of Divorce Cases in this paper" would very considerably increase its circulation. The patronage of the Ladies Sneerwell and Scandal would, of course, be lost.

In the matter of gambling, opinions widely differ, and the State seems to comply with them all. It prohibits some kinds of betting and lotteries under heavy penalties. Other kinds, such us betting on race-courses, it tolerates, but refuses to sanction; and other kinds, again, it recognises and sanctions, such as Insurance and Stock Exchange speculations. Probably it may be said that according to the spirit of Scotch jurisprudence a fair bet should be enforced like any other contract, whereas English law would consistently refuse to sanction it. As to which is the best course for the State to adopt, having regard to the general welfare, opinions again differ.

The State is very anxious that the registration of births should be kept regularly; and yet it couples registration and vaccination together in such a way that an objector has only to omit to register his children, and he is at once freed from the unwelcome attentions of the Vaccination Officer. Considering the number of Anti-vaccinists in the country, this seems an insane policy. Anyhow, it seems impolitic to arrange that so soon as a citizen breaks one law of the land, it straightway becomes his interest and his wisest course to break another. If a man will not vaccinate his children, he is a fool to register them. It is the same with the drink laws. More lies have been told about *bonâ-fide* travelling than any other subject during the last twenty years; and, when necessary, they have been emphasised by perjury.

Coming to State action in the interests of religion, there is great diversity of view. The tendency has clearly been in the direction of diminished Government interference in such matters. People are no longer burned for heresy. Whether heretics should be burnt is still a debated question, but the "Noes" have it. Not so, however, with regard to Sabbath observance, Sunday trading, Sunday amusements, etc. On these points, and on the maintenance of a Church establishment, public opinion seems to be pretty evenly balanced. There still remain on the statute book certain laws relating to oaths,

and others relating to blasphemy, which imply that the State considers itself bound to punish offences against what may be called the national religion.

In this very brief survey of existing State functions in England, I have necessarily omitted all reference to whole classes of Government action, and notably to that coming under the head Justice. And I have passed over the whole field of municipal functions, such as road-making and maintaining, paving and cleaning, lighting, bridge-building, the laying of sewers and drains, water supply, fire extinction, the regulation of cemeteries, markets and fairs, etc., etc. In spite of all these omissions, the area surveyed is wide enough to call up doubts in the minds of both parties—Individualists and Socialists—as to whether the happy mean has in all cases been yet hit upon. It may be doubted whether worship of the State will be stimulated by the survey.

For the State is mindful of its own, and it re-membereth its children. Our father, the all-wise, the omnipotent State, has watched over us for generations. What has it done for us? It has made poor laws, and thus brought into existence an army of 170,000 tramps, creeping like lice over the surface of the land. It has suppressed the healthy recreations of the people, and driven them to dens of drink and vice, where they spend eighty millions of their hard-earned wages in trying to squeeze some enjoyment out of life. By its inexorable law of practically indissoluble marriage, it has brought into existence a huge army of prostitutes, and perpetuated the scourge of Tyre. It has permitted its children for a generation to spread the loathsome disease smallpox by inoculation, and then it has compelled them to keep it alive by vaccination. It has stamped out improvements in sanitation by its compulsory sewage system, thus propagating the germs of typhoid and cholera. By its inopportune interference between the workers and their employers, it has stereotyped a moribund system of wagedom, and set back the enfranchisement of labour for generations. It has stifled the electric light, the telephone, and all the latest and greatest inventions. It has artificially bolstered up unwieldy estates, and clogged the wheels of agriculture. It has raised the cost of transport 100 per cent by the creation of monster monopolies, strangling all competition with the Post-Office, and with State-coddled and State-bullied railway companies, water companies, gas companies, and the like. It has well-nigh crushed out the healthy and natural system of education which has already put England at the head of the nations, and made an Englishman the most valuable worker to be found in the market. Finally, by its idiotic restrictions on co-operative enterprise—its law of partnerships and of joint-stock companies—it has diverted millions upon millions of capital from prudent and productive investments into the unproductive coffers of an extravagant State. It has done many other equally wise and paternal things, and it is on the high road to a great many more.

Can no one stave off the impending evil? Must we sink beneath the wave of socialism which is threatening all the civilised nations of the earth? The people? No; they desire it. Their representatives in the House of Commons? No; they have to buy their position by pandering to the most numerous section of their constituencies. The Second Chamber? No; they are trembling for their privileges, and must buy off the enemy by throwing sops to the masses.

To time, and to time alone, must we look as the Saviour of Society. “Fortunately, in the mortality of man lies the Salvation of Truth.” The society of the remote future will be held together on the principle of absolute philosophical anarchy; but at present we are passing through a transitional period, in which we are continually subject to socialistic relapses. At this particular time the attack is a severe one. We shall not touch the bottom until we have universal suffrage, and the sooner we touch the bottom the better. It is always well to know the worst. Democratic socialism is no worse than aristocratic socialism; in some respects the tyranny of the many is less odious; in other respects, it is more hateful than the tyranny of the few. In order to justify our action in combating the one, we must loyally sweep away the other. State religion must go. The Church, as such, must be disestablished and disendowed; but the clergy of the Church must not be despoiled to the extent of a penny-piece. The Second Chamber must be supported as a legislative Court of Appeal; but it must be purged of the bishops, and the hereditary principle must make way for modern arrangements. Neither should the plutocratic principle continue to prevail in the Lower House. Members should be paid for their services, but not at the expense of those who would prefer to see them hanged. Every member of Parliament should be paid what he is worth by his own constituents. Legislation is not required for that.

With regard to the duties of Government or the functions of the State, let us curtail the scope, while insisting for the present on the more rigorous fulfilment of the remainder. The time is not yet ripe for complete individualism. The starving of our defensive forces (army and navy) seems to be a source not only of weakness, but of expense in the long-run. Also, there seems to be too much parsimony in the maintenance of our judicial system; our judges are too few in number; they are ill-paid and overworked. All this is mistaken economy. Justice should be certain, cheap, speedy, and accessible. It is at present none of these. While crimes go unpunished, while honest citizens put up with injuries rather than appeal to the law,—the State, the father of the people, is occupied in reading through all the comedies and burlesques brought out in the London and provincial theatres; it is running after little boys who dare to play pitch-farthing; it is peeping through the chinks in the shutters of public-houses to see that no capable citizen has a glass of beer at the wrong hour; it is going on sledging expeditions to the North Pole or yachting trips in the Antarctic Ocean; it is prescribing cab fares and boat fares; it is holding spelling-bees for fishermen; it is mixing wholesome “squashes” for the operatives in lead works; it is scouring the firmament for new asteroids; it is, or till lately was, writing suitable poetry on the landing of foreign princes on British soil; it is polluting our principal rivers with sewage, and persecuting other people for fishing in the close time. Above all, it is inspecting everybody and everything, with the result that things are very much as before—all but the bill, which has to be paid for the inspection. Let but the State mind its own business thoroughly and exclusively, and the co-operation of sane citizens will accomplish the rest.

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CHAPTER II

The Limits Of Liberty

The power of the State may be defined as the resultant of all the social forces operating within a definite area, “It follows,” says Professor Huxley, with characteristic logical thoroughness, “that no limit is, or can be, theoretically set to State interference.”

Ab extra—this is so. I have always endeavoured to show that the effective majority has a right (a legal right) to do just what it pleases. How can the weak set a limit to the will of the strong? Of course, if the State is rotten, if it does not actually represent the effective majority of the country, then it is a mere sham, like some little old patriarch who rules his brawny sons by the prestige of ancient thrashings.

The time comes in the life of every Government when it becomes effete, when it rules the stronger by sheer force of prestige; when the bubble waits to be pricked, and when the first determined act of resistance brings the whole card-castle down with a crash. The *bouleversement* is usually called a revolution. On the contrary, it is merely the outward and visible expression of a death which may have taken place years before. In such cases a limit can be set to State interference by the simple process of exploding the State. But when a State *is* (as Hobbes assumes) the embodiment of the will of the effective majority—*force majeure*—of the country, then clearly no limit can be set to its interference—*ab extra*. And this is why Hobbes (who always built on fact) describes the power of the State as absolute. This is why he says that each citizen has conveyed all his strength and power to the State.

I fail to see any *a priori* assumption here. It is the plain truth of his time and of our own. We may agree with John Locke that there ought to be some limit to despotism, and we may keep on shifting the concentrated force from the hands of the One to those of the Few; from the hands of the Few to those of the Many; and from the hands of the Many to those of the Most—the numerical majority. But this handing about of the power cannot alter its nature; it still remains unlimited despotism, as Hobbes rightly assumes. Locke's pretence that the individual citizens reserved certain liberties when the State was formed is of course the merest allegory, without any more foundation, in fact, than Rousseau's *Contrat Social*. It is on a par with the “natural right” of every citizen born into the world to an acre of land and a good education. We may consider that nation wise which should guarantee these advantages to all its children, or we may not; but we must never forget that the rights, when created, are created by the will of the strong for its own good pleasure, and not carved out of the absolute domain of despotism by any High Court of Eternal Justice.

Surely it is the absence of all these *a priori* vapourings, common to Locke, Rousseau; and Henry George, which renders the writings of Hobbes so fascinating and so instructive.

Shall we then sit down like blind fatalists in presence of the doctrine "no limit can be set to State interference"? Certainly not I have admitted that no limit can be set *from without*. But just as we can influence the actions of a man by appeals to his understanding, so that it may be fairly said of such an one "he cannot lie," and of another that it is easier to turn the sun from its course than Fabricius from the path of duty: so we may imbue the hearts of our own countrymen with the doctrine of individualism in such wise that it may some time be said of England, "Behold a free country." It is to this end that individualists are working. Just as a virtuous man imposes restrictions on the gratification of his own appetites, *apparently* setting a limit to his present will, and compelling a body to move in a direction other than that of least resistance, so, it is hoped, will the wise State of the future lay down a general principle of State action for its own voluntary guidance, which principle is briefly expressed in the words *Let be*.1

In his effort to supply destructive criticism of *a priori* political philosophy, which is the task Professor Huxley set before him, it seems to me he has been a little unjust to Individualism. He has taken for granted that it is based on *a priori* assumptions and arguments which are as foreign to the reasoning of some of its supporters as to its own. The individualist claims that under a system of increasing political liberty, many evils, of which all alike complain, would disappear more rapidly and more surely before the forces of co-operation than they will ever do before the distracted efforts of democratic "regimentation."

Of course there are individualists as there are socialists, and, we may add, artists and moralists and most other -ists who hang most of their conclusions on capital letters. We have Liberty and Justice and Beauty and Virtue and all the rest of the family; but it is not fair to assert or even to insinuate that Individualism as a practical working doctrine in this country and in the United States is based on reasoning from abstractions. Professor Huxley refers to "moderns who make to themselves metaphysical teraphim out of the Absolute, the Unknowable, the Unconscious, and the other verbal abstractions whose apotheosis is indicated by initial capitals." And he adds, "So far as this method of establishing their claims is concerned, socialism and individualism are alike out of court." Granted—but so is morality. Honesty, Truth, Justice, Liberty, and Right are teraphim when treated as such, every whit as ridiculous as the Unknowable or the Unconditioned. Nevertheless it is surely possible to label general ideas with general names, after the discovery of their connotation, without being charged with the worship of abstractions. And unless Professor Huxley is prepared to dispense with such general ideas as Right and Wrong, True, Beautiful and Free, I fail to see what objection he can have to the Unknowable when employed to denote what has been so carefully and clearly defined under that term by Mr. Spencer.

At the same time I admit that we have reason to thank Professor Huxley for his onslaught on Absolutism in politics, whereby he has done more good to the cause of progress than he could ever hope to do by merely dubbing himself either individualist or socialist. When the majority learns that its acts can be criticised, just as other people's acts are criticised; that it can behave in an "ungentle-manly" manner, as well as in a wrongful manner; that it should be guided in its treatment of the minority by its *conscience*, and not solely by laws of its own making; then there will be no scope for

any other form of government than that which is based on individualism; and the Rights of Man will exist as realities, and not as a mere expression denoting each man's private notions of what his rights *ought* to be.

No one with the smallest claim to attention has been known to affirm that this or any other nation is yet ripe for the abolition of the State. Some of the more advanced individualists and philosophical anarchists express the view that absolute freedom from State interference is the goal towards which civilisation is making, and, as is usual in the ranks of all political parties, there are not wanting impatient persons who contend that *now* is the time for every great reform.

Such are the people who would grant representative institutions to the Fijians, and who would model the Government of India on that of the United States of America. They may safely be left out of account. I suppose no one acquainted with his political writings will accuse Mr. Victor Yarros of backwardness or even of opportunism. Yet, says he:—

The abolition of the external State must be preceded by the decay of the notions which breathe life and vigour into that clumsy monster: in other words, it is only when the people learn to value liberty, and to understand the truths of the anarchistic philosophy, that the question of practically abolishing the State looms up and acquires significance.

Again, Mr. Benjamin Tucker, the high priest of anarchy in America, claims that it is precisely what is known in England as individualism. So far is he from claiming any natural right to liberty that he expressly repudiates all such *a priori* postulates, and bases his political doctrine on the evidence (of which there is abundance) that liberty would be the mother of order. Referring to Professor Huxley's attack on anarchists as persons who build on baseless assumptions and fanciful suppositions, he says:—

If all anarchists were guilty of such folly, scientific men like Professor Huxley could never be expected to have respect for them; but the professor has yet to learn that there are anarchists who proceed in a way that he himself would enthusiastically approve; who take nothing for granted; who vitiate their arguments by no assumptions; but who study the facts of social life, and from them derive the lesson that liberty would be the mother of order.

The truth is that the science of society has met with general acceptance of late years, and (thanks chiefly to Mr. Spencer) even the most impatient reformers now recognise the fact that a State is an organism and not an artificial structure to be pulled to pieces and put together on a new model whenever it pleases the effective majority to do so. Advice which is good to a philosopher may be bad to a savage and worse to an ape. Similarly institutions which are well suited to one people may be altogether un-suited to another, and the best institutions conceivable for a perfect people would probably turn out utterly unworkable even in the most civilised country of this age. The most ardent constitution-framer now sees that the chances are very many against the Anglo-Saxon people having reached the zenith of progress exactly at the moment when Nature has been pleased to evolve *him* as its guide. And if it must be admitted that we

are not yet ripe for that unconditioned individual liberty which may be the type of the society of the future, it follows that *for the present* we must recognise some form of State interference as necessary and beneficent. The problem is, What are the proper limits of liberty? and if these cannot be theoretically defined, what rules should be adopted for our practical guidance? With those who answer No limits, I will not quarrel. Such answer implies the belief that we have as a nation already reached the top rung of the ladder—that we are ripe for perfect anarchy. This is a question of fact which each can answer for himself. I myself do not believe that we have attained to this degree of perfection, and furthermore those who do believe it cannot evade, the task of fixing the limits of liberty in a lower plane of social development. We can force them to co-operate with us by admitting their contention for the sake of argument, and then asking whether the Russians are ready for absolute freedom, and if so, whether the Hindoos are ready, or the Chinese, or the Arabs, or the Hottentots, or the tree-dwarfs? The absolutist is compelled to draw the line sooner or later, and then he is likewise compelled to admit that the State has legitimate functions on the other side of that line.

And he must also admit that in practice people have to settle where private freedom and State action shall mutually limit each other. Benjamin Tucker's last word still leaves us in perplexity as to the practical rule to be adopted *now*. Let me quote his words and readily endorse them,—as far as they go:—

Then liberty always, say the anarchists. No use of force, except against the invader; and in those cases where it is difficult to tell whether the alleged offender is an invader or not, still no use of force except where the necessity of immediate solution is so imperative that we must use it to save ourselves. And in these few cases where we must use it, let us do so frankly and squarely, acknowledging it as a matter of necessity, without seeking to harmonise our action with any political ideal or constructing any far-fetched theory of a State or collectivity having prerogatives and rights superior to those of individuals and aggregations of individuals and exempted from the operation of the ethical principles which individuals are expected to observe. This is the best rule that I can frame as a guide to voluntary co-operators. To apply to it only one case, I think that under a system of anarchy, even if it were admitted that there was some ground for considering an unvaccinated person an invader, it would be generally recognised that such invasion was not of a character to require treatment by force, and that any attempt to treat it by force would be regarded as itself an invasion of a less doubtful and more immediate nature, requiring as such to be resisted.

But how far does this “best rule” carry us? Let us test it by the case selected. Mr. Tucker thinks that under a *régime* of liberty it would be generally recognised that such an invasion of the individual's freedom of action as is implied by compulsory vaccination is a greater and a worse invasion than the converse invasion of the general freedom by walking about in public “a focus of infection.” Perhaps it would be so recognised in some future state of anarchy, but is it so recognised *now*? I think not. The majority of persons, in this country at least, treat it, and consider that it ought to be treated, as an offence; just as travelling in a public conveyance with the scarlatina rash is treated. And the question is, What, in face of actual public opinion, ought we

to do to-day? The rule gives us no help. Even the most avowed State socialist is ready to say that compulsion in such matters is justifiable only when it is "so imperative that we *must* use it to save selves." He is ready to do so, if need be, "fairly and squarely, acknowledging it as a matter of necessity." But so is the protectionist; so is the religious persecutor. Mr. Tucker continues:—

The question before us is not what measures and means of interference we are justified in instituting, but which of those already existing we should first lop off. And to this the anarchists answer that unquestionably the first to go should be those that interfere most fundamentally with a free market, and that the economic and moral changes that would result from this would act as a solvent upon all the remaining forms of interference.

Good again, but why? There must be some middle principle upon which this conclusion is based. And it is for this middle principle, this practical rule for the guidance of those who must act at once, that a search must be made. To restate the question:—

Can any guiding principle be formulated whereby we may know where the State should interfere with the liberties of its citizens and where it should not? Can any definite limits be assigned to State action? Where in theory shall we draw the line which in practice we *have to draw somewhere*?

Surely an unprincipled State is as bad as an unprincipled man. Yet what should we think of a man who, in moral questions, decided each case on its merits as a question of immediate expediency? who admitted that he told the truth or told lies just as it suited the object he had presently in view? We should say he was an unprincipled man, and we should rightly distrust him. An appeal to Liberty is as futile as an appeal to Justice, until we have defined Liberty.

Various suggestions have been made in order to get over this difficulty. Some people say, Let every man do what is right in his own eyes, provided he does not thereby injure others. To quote Mill:—

The principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection: that the only purpose for which power can be rightfully exercised over any member of a civilised community against his will is to prevent harm to others.

To this Lord Pembroke shrewdly replies:—

But how far does this take us? The very kernel of our difficulty is the fact that hardly any actions are purely self-regarding. The greater part of them bear a double aspect—one which concerns self, another which concerns others.

We might even go further; we might plausibly maintain that every act performed by a citizen from his birth to his death injures his neighbours more or less indirectly. If he eats his dinner he diminishes the supply of food and raises the price. His very existence causes an enhanced demand for the necessaries of life; hence the cry against

over-population. One who votes on the wrong side in a Parliamentary election injures all his fellow-countrymen. One who marries a girl loved by another injures that other. One who preaches Christianity or Agnosticism (if untrue) injures his hearers and their relatives and posterity. One who wins a game pains the loser. One who sells a horse for more than it is worth injures the purchaser, and one who sells it for less than it is worth injures his own family.

Taking practical questions concerning which there is much dispute; there are advocates of State interference with the citizen's freedom to drink what he likes, who base their action, not on the ground that the State should protect a fool against the effects of his folly, but on the ground that drink fills the workhouses and the prisons, which have to be maintained out of the earnings of the sober; and, furthermore, that drink leaves legacies of disease and immorality to the third and the fourth generation. Advocates of compulsory vaccination have been heard to say that they would willingly leave those who refuse the boon to perish of smallpox, but that unvaccinated persons are foci of infection, and must be suppressed in the common interest. Many people defend the Factory Acts, not for the sake of the apathetic workers who will not take the trouble to organise and to defend themselves, but for the sake of the physique of the next generation. The suppression of gambling-hells is favoured by many, not on account of the green-horns who lose their money, but because they are schools of cheating and fraud, and turn loose upon society a number of highly-trained swindlers. On the whole, Mill's test will not do.

Some say, “We must fall back on the consensus of the people; there is nothing else for it; we must accept the arbitrary will—the caprice—of the governing class, be they the many or be they the few.” Others, again, qualify that contention. These say, let us loyally accept the verdict of the majority. This is democracy. I have nothing to urge against it. But, unfortunately, it only shoves the question a step further back. How are the many to decide for themselves when they ought to interfere with the minority and when they ought not? This is just the guiding principle of which we are in search; and it is no answer to tell us that certain persons must decide it for themselves. We are amongst the number; what is our vote going to be? Of course the stronger can do what they choose; but what ought they to choose? What is the wisest course for their own welfare, leaving the minority out of the reckoning?

Socialists say, treat all alike, and all will be well. But equality in slavery is not liberty. Even the fox in the fable would not have had his own tail cut off for the fun of seeing the other foxes in like plight. After the event, it was quite another matter; and one can forgive those who are worked to death for demanding that the leisured classes shall be forced to earn their living. Lock us all up in gaol, and we shall all be equally moral and equally happy.

Nor is it any solution of this particular problem to abolish the State, however prudent that course might or might not be: the answer to the present question is not “No Government!” For this again merely throws the difficulty a step further back. We may put the State on one side and imagine a purely anarchic form of society, and the same question still arises. That is to say, philosophical anarchists do not pretend that the anarchy of the wild beasts is conceivable among sane men, still less

desirable,—though they are usually credited with this imbecile notion. They believe that all necessary restrictions on absolute liberty can be brought about by voluntary combination. Let us admit that this may be so. The question then arises, for what purposes are people to combine? Thus the majority in a club can, if they choose, forbid billiard-playing on Sundays. Ought they to do so? Of course the majority may disapprove of and refrain from it, but ought they to permit the minority to play? If not, on what grounds? The Christians in certain parts of Russia have an idea that they are outwitted and injured by their Jew fellow-citizens. If unrestrained by the stronger majority outside—the State—they persecute and drive off the Jews. Ought they to do this? If you reply, "Leave it to the sense of the people," the answer is settled, they ought. It is, therefore, no answer to our question to say, Away with the State. It may be a good cry, but it is no solution of our problem. Because you cannot do away with the effective majority.

To reply that out of one hundred persons, the seventy-five weak and therefore orderly persons can combine against the twenty-five advocates of brute force, is merely to beg the whole question. Ought they to combine for this purpose? And if so, why not for various other purposes? Why not for the very purposes for which they are now banded together in an association called the State?

You rejoin, "True, but it would be a voluntary State, and that makes all the difference; no one need join it against his will." My answer is, he need not join it now. The existence of the burglar in our midst is sufficient evidence for this. But since the anarchy of the wild beasts is out of the question, it is clear that certain arbitrary and aggressive acts on the part of individuals must be met and resisted by voluntary combination—by the voluntary combination of a sufficient number of others to overpower them by fear, or, if necessary, by brute force. Again I ask, for what purposes are these combinations to be made?

Whether we adopt despotism or democracy, socialism or anarchy, we are always brought back to this unanswered question, What are the limits of group action in relation to its units? Shall we say that the State should never interfere with the mutual acts of willing parties? (And by the State I wish to be understood as here meaning the effective majority of a group, be it a club or be it a nation,) This looks plausible, but alas! who are the parties? The parties acting, or the parties affected? Clearly the latter, for otherwise, two persons could agree to kill a third. But who then are the persons affected? Suppose a print-seller, with a view to business, exposes in his shop-window a number of objectionable pictures, for the attraction of those only who choose to look at them and possibly to buy them. I have occasion to walk through that street; am I a party? How am I injured? Is my sense of decency shocked and hurt? But if this is sufficient ground for public interference, then I have a right to call for its assistance when my taste is hurt and shocked by a piece of architecture which violates the laws of high art. I have similar ground of complaint when a speaker gets up in a public place and preaches doctrines which are positively loathsome to me. I have a right of action against a man clothed in dirty rags, or with pomaded hair or a scented pocket-handkerchief.

If you reply that in these cases my hurt is not painful enough to justify any interference with another's freedom, I have only to cite the old and almost forgotten arguments for the inquisition. The possible eternal damnation of my children, who are exposed to heretical teaching, is surely a sufficiently painful invasion of my happiness to warrant the most strenuous resistance. And even to modern ears, it will seem reasonable that I should have grounds of action against a music-hall proprietor who should offend the moral sense of my children with songs of a pernicious character. This test then will not do.

It has been suggested that the State should not meddle except on the motion of an individual alleging injury to himself. In other words, that the State must never act as prosecutor, but leave all such matters entirely to private initiative; and that no person should be permitted to complain that some other person is injured or likely to be injured by the act complained of. But there are two valid objections to this rule: firstly, it provides no test of injury or hurt; secondly, it would not meet the case of cruelty to animals or young children, or imbeciles or persons too poor or too ill to take action. It would permit of the murder of a friendless man. This will not do.

May I now venture to present my own view? I feel convinced that there is no a *priori* solution of the problem. We cannot draw a hard and fast line between the proper field of State interference and the field sacred to individual freedom. There is no general principle whereby the effective majority can decide whether to interfere or not. And yet we are by no means left without guidance. Take the parallel region of morals: no man has ever yet succeeded in defining virtue *a priori*. All we can say is that those acts which eventually conduce to the permanent welfare of the agent are moral acts, and those which lead in the opposite direction are immoral. But if any one asks for guidance beforehand, he has to go away empty. It is true, certain preachers tell him to stick to the path of virtue, but when it comes to casuistry they no more know which is the path of virtue than he does himself. “Which is the way to York?” asks a traveller. “Oh, stick to the York Road, and you can't go wrong.” That is the sum and substance of what the moralists have to tell us. And yet we do not consider that we are altogether without guidance in these matters. Middle principles, reached by induction from the experience of countless generations, have been formulated, which cannot be shown to be true by any process of deduction from higher truths, but which we trust, simply because we have found them trustworthy a thousand times, and our parents and friends have safely trusted them too. Do not lie. Do not steal. Do not hurt your neighbour's feelings without cause. And why not? Because, as a general rule, it will not pay.

Where is the harm in saying two and two make five? Either you are believed or you are disbelieved. If disbelieved, you are a failure. One does not talk for the music of the thing, but to convey a belief. If you are believed, you have given away false coin or a sham article. The recipient thinks he can buy with it or work with it, and lo! it breaks in his hand. He hates the cause of his disappointment. “Well, what of that?” you say; if I had been strong enough or plucky enough, I would have broken his head, and he would have hated me for that. Then why should I be ashamed to tell a lie to a man whom I deliberately wish to hurt? Here we come nearly to the end of our tether.

Experience tells us that it is mean and *self-wounding* to lie, and we believe it. Those who try find it out in the end.

And if this is the true view of individual morals, it should also be found true of what may be called Group Morals or State Laws. We must give up all hope of deducing good laws from high general principles, and rest content with those middle principles which originate in expedience and are verified by experience. And we must search for these middle principles by observing the tendency of civilisation. In morals they have long been stated with more or less precision, but in politics they are still unformulated. By induction from the cases presented to us in the long history of mankind, we can, I believe, find a sound working answer to the question we set out with. All history teaches us that there has been an increasing tendency to remove the restrictions placed by the State on the absolute liberty of its citizens. That is an observed fact which brooks no contradiction. In the dawn of civilisation, we find the bulk of the people in a state of absolute bondage, and even those who supposed themselves to be the independent classes, subject to a most rigorous despotism. Every act from the cradle to the grave must conform to the most savage and exacting laws. Nothing was too sacred or too private for the eye of the State. Take the Egyptians, the Assyrians, the Babylonians, the Persians; we find them all in a state of the most complete subjection to central authority. Probably the code of law best known to us, owing to its adoption as the canvas on which European religion is painted, is the code of the Jewish theocracy. Most of us know something of the drastic and searching rules laid down in the books of Moses. Therein we find every concern of daily life ruled and regulated by the Legislature; how and when people shall wash themselves, what they may eat and what they must avoid, how the food is to be cooked, what clothes may be worn, whom they may marry, and with what rites; while, in addition to this, their religious views are provided carefully for them and also their morals, and in case of transgression, intentional or accidental, the form of expiation to be made. Nor were these laws at all peculiar to the Jews. On the contrary, the laws of some of the contemporary civilisations seem to have been, if possible, even more exacting and frivolously meddlesome. The Greek and Roman laws were nothing like the Oriental codes, but still they were far more meddlesome and despotic than anything we have known in our day. And even in free and merry England we have in the olden times put up with an amount of fussy State interference which would not be tolerated for a week nowadays. One or two specimens of early law in this country may be cited in order to recall the extent and severity of this kind of legislation.

They shall have bows and arrows and use the same of Sundays and holidays; and leave all playing at tennis or football and other games called quoits, dice, casting of the stone, kailes, and other such importune games.

Forasmuch as labourers and grooms keep greyhounds and other dogs, and on the holidays when good Christians be at church hearing divine service, they go hunting in parks, warrens, and connigries, it is ordained that no manner of layman which hath not lands to the value of forty shillings a year shall from henceforth keep any greyhound or other dog to hunt, nor shall he use ferrets, nets, heys, harepipes nor cords, nor other engines for to take or destroy deer, hares, nor conies, nor other *gentlemen's game*, under pain of twelve months' imprisonment.

For the great dearth that is in many places of the realm of poultry, it is ordained that the price of a young capon shall not pass threepence, and of an old fourpence, of a hen twopence, of a pullet a penny, of a goose fourpence.

Esquires and gentlemen under the estate of a knight shall not wear cloth of a higher price than four and a-half marks, they shall wear no cloth of gold nor silk nor silver, nor no manner of clothing embroidered, ring, button, nor brooch of gold nor of silver, nor nothing of stone, nor no manner of fur; and their wives and daughters shall be of the same condition as to their vesture and apparel, without any turning-up or purfle or apparel of gold, silver, nor of stone.

Because that servants and labourers will not, nor by a long season would, serve and labour without outrageous and excessive hire, and much more than hath been given to such servants and labourers in any time past, so that for scarcity of the said servants and labourers the husbands and land-tenants may not pay their rents nor live upon their lands, to the great damage and loss as well of the Lords as of the Commons, it is accorded and assented that the bailiff for husbandry shall take by the year 135. 3d. and his clothing once by the year at most; the master hind IDS., the carter ios., the shepherd ios., the oxherd 6s. 8d., the swineherd 6s., a woman labourer 6s., a dey 6s., a driver of the plough 7s. at the most, and every other labourer and servant according to his degree; and less in the country where less was wont to be given, without clothing, courtesy or other reward by covenant. And if any give or take by covenant more than is above specified, at the first that they shall be thereof attainted, as well the givers as the takers, shall pay the value of the excess so taken, and at the second time of their attainder the double value of such excess, and at the third time the treble value of such excess, and if the taker so attainted have nothing whereof to pay the said excess, he shall have forty days' imprisonment.

One can cite these extraordinary enactments by the score, with the satisfactory result of raising a laugh at the expense of our ancestors; but before making too merry, let us examine the beam in our own eye. Some of the provisions of our modern Acts of Parliament, when looked at from a proper distance, are quite as ludicrous as any of the little tyrannies of our ancestors. I do not wish to tread on delicate ground, or to raise party bias, and therefore I will resist the temptation of citing modern instances of legislative drollery.[1] Doubtless the permanent tendency in this country, as all through history, is in a direction opposed to this sort of grandmotherly government; but the reason is not, I fear, our superior wisdom; it is the increasing number of conflicting interests, all armed with democratic power, which renders it difficult. The spirit is willing, but the flesh is weak.

I can imagine no healthier task for our new school of social reformers than a careful inquiry into the effects of all State attempts to improve humanity. It would take too long to go through even a few of them now. There are all the statutes of Plantagenet days against forestalling and regrating and usury; there are the old sumptuary laws, the fish laws, the cloth laws, the Tippling Acts, the Lord's Day Observance Act, the Act against making cloth by machinery, which, by its prohibition of the “divers devilish contrivances,” drove trade to Holland and to Ireland, and thus made it needful to suppress the Irish woollen trade. Still, on the whole, as I have said, State

interference shows signs of becoming weaker and weaker as civilisation progresses. And this brings us back to our original question, What is the rule whereby the majority is to guide itself as to where it should interfere with the freedom of individuals and where it should not? It is this: while according the same worship to Liberty in politics that we accord to Honesty in private dealings, hardly permitting ourselves to believe that its violation can in any case be wise or permanently expedient,—while leaning to Liberty as we lean to Truth, and deviating from it only when the arguments in favour of despotism are absolutely overwhelming, our aim should be to find out by study of history what those classes of acts are, in which State interference shows signs of becoming weakened, and as far as possible to hasten on the day of complete freedom in such matters.

When the student of history sees how the Statute of Labourers broke down in its effort to regulate freedom of contract between employer and employed, in the interest of the employer, he will admit the futility of renewing the attempt, this time in the interest of the employed. When he reads the preamble[1] (or pre - ramble, as it is aptly styled in working-men's clubs) to James's seventh Tippling Act, he will be less sanguine in embarking on modern temperance legislation.

We find the same record of failure and accompanying mischiefs all along the line, and it is mainly our ignorance of history that blinds us to the truth. By this process of induction, the earnest and honest reformer is led to discover what those individual acts are which are really compatible with social cohesion. He finds that while the State tends to suppress violence and fraud and stealth with ever-increasing severity, it is at the same time more and more tolerant, not from sympathy, but from necessity, of the results, good, bad, and indifferent, of free contract between full-grown sane men and women.

And when a well-wisher to mankind has once thoroughly appreciated and digested this general principle, based as it is on a survey of facts and history, and not woven out of the dream -stuff of *a priori* philosophy, he will be content to remove all artificial hindrances to progress, and to watch the evolution of society, instead of trying to model it according to his own vague ideas of the Just, and the Good, and the Beautiful.

I wish to show that the only available method of discovering the true limits of liberty at any given period is the historic. History teaches us that there has been a marked tendency (in the main continuous) to reduce the number of State restrictions on the absolute freedom of the citizens. State prohibitions are becoming fewer and more definite, while, on the other hand, some of them are at the same time more rigorously enforced. Freedom to murder and to rob is more firmly denied to the individual, while in the meantime he has won the liberty to think as he pleases, to say a good deal more of what he pleases, to dress in accordance with his own taste, to eat when and what he likes, and to do, without let or hindrance, a thousand things which, in the olden times, he was not allowed to do without State supervision. The proper aim of the reformer, therefore, is to find out, by a study of history, exactly what those classes of acts are in which State interference shows signs of becoming weaker and weaker, and what those other classes of acts are in which such interference tends to be more rigorous and

regular. He will find that these two classes are becoming more and more differentiated. And he will then, to the utmost of his ability, hasten on the day of absolute freedom in the former class of cases, and insist on the most determined enforcement of the law in the latter class. Whether this duty will in time pass into other hands, that is to say, whether private enterprise will ever supplant the State in the performance of this function, and whether that time is near or remote, are questions of the greatest interest. What we are mainly concerned to note is that the organisation or department upon which this duty rests incurs a responsibility which must, if society is to maintain its vitality, be faithfully borne. The business of carrying out the fundamental laws directed against the lower forms of competition,—murder, robbery, fraud, etc.-must, by whomsoever undertaken, be unflinchingly performed, or the entire edifice of modern civilisation will fall to pieces.

It is enough to make a rough survey of the acts of citizens in which the State claims, or has at one time claimed, to exercise control; to track those claims through the ages; and to note the changes which have taken place in those claims. It remains to follow up the tendency into the future. Any one undertaking this task will, I repeat, find himself in the presence of two large and fairly well-defined classes of State restrictions on private liberty; those which tend to become more thorough and invariable, and those which tend to become weaker, more spasmodic and variable. And he will try to abolish these *unprincipled* interferences altogether, in the belief, based on history, that, though some harm will result from the change, a far more than compensating advantage will accrue to the race. In short, what we have to do is to find the Least Common Bond in politics, as a mathematician finds the Least Common Multiple in the field of numbers.

Take these two joint-stock companies, and consider their prospects. The first is formed for the purpose of purchasing a square mile of land, for getting the coal from under the surface, for erecting furnaces on the land, for making pig-iron and converting it into wrought iron and steel, for building houses, churches, and schools for the workpeople, and for converting them and their neighbours to the Catholic faith, and for doing all such other matters and things as shall from time to time appear good to the Board of Directors. The second company is formed for the purpose of leasing a square mile of land, for getting the coal from under the surface, and selling it to the coal-merchants. Now that is just the difference between the State of the past and the State of the future. The shareholders in the second company are not banded together or mutually pledged and bound by a multitude of obligations, but by the *fewest compatible with the joint aim*. The company with the Least Common Bond is usually the most prosperous, A State held together by too many compacts will perform all or most of its functions ill. What we have to find is this Least Common Bond. Surely it would be absurd to argue that because the shareholders should not be bound by too many compacts, therefore they should not be bound by any. It is folly to pretend that each should be free to withdraw when and how he chooses; that he should be free to go down into the pits, and help himself to the common coal, in any fashion agreeable to himself, so long as he takes no more than his own portion. By taking shares in the Midland Railway Company, I have not bought the right to grow primroses on the line, or to camp out on the St. Pancras Station platform. My liberty to do what I choose with my share of the joint-stock is suspended. I am to that extent

in subjection. My fellow-shareholders, or the majority of them, are my masters. They can compel me to spend my own money in making a line of rails which I am sure will never pay. Yet I do not grumble. But if they had the power (by our compact) to declare war on the Great Northern, or to import Dutch cheeses and Indian carpets, I should not care to be a shareholder of that Company—a citizen of that State.

What we have got to do, then, is to purge the great company which has long ago been formed for the purpose of utilising the soil of this country to the best effect, from the multifarious functions with which it has overburdened itself. We, the shareholders, have agreed that the Red Indian system is not suited to this end; and we have therefore agreed to forgo our rights (otherwise admitted) of taking what we want from each other by force or fraud. This seems to be a necessary article of association. There is nothing to prevent us from agreeing to forgo other rights and liberties if we choose; and possibly there may be some other restraints on our individual liberty which can be shown to be desirable, if not essential, to the success of the undertaking. If so, let them be stated, and the reason for their adoption given. If, on the other hand, it can be shown that a large and happy population can be supported on this soil without any other mutual restriction on personal freedom than that which is involved in the main article of association, would it not be as well for all if each kept charge of his own conscience and his own actions?

Criticising this view, Mr. F. Evershed makes war, as it seerns to me, upon the Method of Induction itself. I argue that because a certain tendency has been observed as an increasing tendency throughout the whole history of civilisation, we are justified in concluding that that tendency is persistent and beneficial. Mr. Evershed replies by citing cases of an opposite tendency over short periods, such as the manifest tendency of the State in Plantagenet times to interfere in such matters as the price of chickens and ducks, Mr. Thorold Rogers, in a lecture in 1883 on *Laissez-Faire*, referred to the tendency at the present day towards collectivism in legislation, and drew the conclusion that we must expect more of it, and furthermore that it is probably beneficial. This kind of argument can be best examined by the light of illustration. At one time navigators rightly observed that as a general rule (not affected by exceptions) the further you travel south, the hotter it is. It was not till the equator was crossed that the generalisation was shown to be false. Before the days of Torricelli, it was said that "Nature abhors a vacuum." It was not until Torricelli had balanced the weight of the atmosphere with 32 feet of water that it was discovered that Nature exults in a vacuum; only under certain circumstances. If Adam was created at the full moon he would have been justified in asserting, after a few days, that in about a fortnight the moon would cease to exist; if his birthday was on the 21st December he would have been similarly justified in believing that the climate gets hotter and hotter every day, and that after many days he would be roasted. Six months later he would have to unlearn this teaching of experience. Again, if I affirm that the sea is encroaching on the land in south-east Yorkshire, Mr. Evershcd might point to the ebb of the tide by way of confutation. Or, better still, he might point to the marine fossils embedded in the rocks far away inland to prove that, as a fact, the land was encroaching on the sea. Now I think Mr. Evershed will admit that all we are enabled to do by the method of induction is to make our observations cover as wide a field as possible, to base our conclusions upon that wide survey, and to act upon such

conclusions for what they are worth. In what are called the practical sciences, our generalisations are formed with *a purpose*. "Honesty is the best policy" may or may not be true for all time and in the far-off planets, but for our present purposes we take it as proved. If a little girl was playing on the rocks just after high tide, it would be a purposeless and unkind truth to tell her that the sea was encroaching on the land. To all intents and purposes it would be an untruth. To tell a harbour company the same thing would be a wholesome truth; to tell a geologist the reverse would be also a truth requiring qualification or explanation. The absolute and ultimate truth is unknown—possibly unknowable. If we assume, as some say, that at one time a shallow ocean covered the whole surface of the earth, then the ultimate truth is that the land is encroaching on the sea.

Now, for the purposes of social government or organisation, I observe that *laissez-faire* has been an increasing tendency from the earliest times down to to-day; not without perturbations and aberrations, but on the average and on the whole, I further observe that whatever adaptations take place over a long period, persistently and increasingly, in organised beings, are beneficial to them. If the trunks of elephants and the necks of giraffes grow longer and longer as the centuries pass, I conclude that long trunks and long necks enable the animals to reach food otherwise unattainable, or are otherwise beneficial to them. When I see races of men adopt rules and customs over very long periods, such as paternal recognition of offspring or collective suppression of individual brute force, I similarly infer that these customs are beneficial to the race. There are exceptions, I know. Sometimes these are due to exceptional circumstances which are known. Sometimes we cannot account for them at all. Sheep are getting more and more stupid, pigs are getting fatter and fatter, and toy - terriers are getting smaller and weaker, and all three are less capable of self-defence, and of self-help in the search for food than they used to be. But we know the cause.

Oddly enough, Mr. Evershed accepts the argument from tendencies in the field of ethics. "We know," he says, "that in all times men of all degrees of honesty and dishonesty have lived side by side and entered into competition with each other—*therefore* there is a strong presumption that those moral principles which in the course of time have become predominant, are the most beneficial. The others have had the same chance and failed." But, to use his own words when criticising State morals, "how far does this take us? Because London has been hitherto getting bigger, will it eventually spread over the whole island?" Will honesty end in the frankness of the crystal man who never says "Not at home" when he is upstairs, who never says "Glad to see you" when he is sorry, who never "regrets to be unable to come" when he is delighted to have an excuse? If not, how far will it take us? The answer is—far enough. The principle is good enough for working purposes. And that is what I affirm of the principle of *let-be*. Stick to it. It has worked well up to now, whenever and wherever it has been fairly tried. If it breaks down when the sun grows cold and the air is "froze stiff," it will be time enough to go into its absolute merits and to find something better.

But Mr. Evershed draws a very important distinction between moral and political tendencies. In the latter case, he says, "the prime conditions necessary for the automatic process of selection—diversity and competition—have not been present to

anything like the same extent. States do not intermingle like individuals, but occupy separate areas, often of large extent. Over every such area there is generally uniformity of system; and if the system is occasionally changed, it is only to be replaced by another uniform system."

Here I must join issue uncompromisingly. Even under absolute despotism the same ruling authority applies different political principles in different departments; still more is this the case in constitutional and democratic States. In our own country at the present time, we have Individualism paramount in many departments of activity, while in other departments (*e.g.* sexual relations) the most stringent socialism prevails. In religion, we have Parliament making laws for one Christian sect and leaving the others free to make their own laws. If nineteen men on nineteen stools without sixpence among them choose to buy on credit to any amount, they may do so; but if twenty men commence similar operations, the State steps in, takes half their affairs out of their hands, publishes or compels them to publish the state of their finances, their several interrelations, and a variety of other matters: which makes their efforts ineffectual. Our law of partnership is the embodiment of Individualism. Our law of joint-stock companies is the embodiment of the crudest Socialism. All through the criminal law, all through the civil law, we find the same absence of uniformity. Perhaps the law relating to fox-hunting is the most marvellous medley of anarchy and socialism known to the world. Woe betide the Government that tampers with it. Why, the State which dared to muzzle all the dogs in the country, slunk trembling away from the kennels. Muzzle the fox-hounds and out goes the Government. Then consider the individualism in the West-End Clubs, and contrast it with the socialism to which the Working-Men's Clubs are subjected.

All this is quite apart from the *local* variations admitted by Mr. Evershcd himself, some of which are created by law, others by public opinion, and others, as he says, by rebellion. The Scotch and the English law of contract do not rest on the same fundamental principle even. And some people say that the right of public meeting is one thing in England and another in Ireland; whereas in Wales one cannot have a glass of beer with one's Sunday sandwich. And so on, and so on. All this *diversity* and *competition* have resulted in proving the folly of Socialism.

And here I should like to guard myself against misapprehension. Individualists are usually supposed to regard the State as a kind of malevolent ogre. Maleficent it is; but by no means malevolent. The State never intervenes without a reason, whether we deem that reason valid or invalid. The reasons alleged are very numerous and detailed, but they all fall under one of two heads. The State interferes either to defend some of the parties concerned against the others, or to defend itself against all the parties concerned. This has nothing to do with the distinction between crimes and civil injuries; it is more in line with the ethical distinction between self-regarding and other-regarding vices. Thus when a State punishes prize-fighters, it is not because one of them injures the other, but because the sport is demoralising: the State is itself injured, and not any determinate person. Similarly, there are many laws punishing drunkenness, quite apart from the violence and nuisance due to it. In these cases the State alleges that, though no determinate citizen is injured, yet the race suffers, and that it rightly punishes the offence with a view to eliminating the habit.

Putting on one side all those acts which injure determinate persons, whether crimes or civil injuries, let us see what the State has done and is doing in this country with regard to acts against which no particular citizen has any good ground of complaint. We may classify the subjects of these laws either according to the object affected, or according to the vice aimed at.

Taking some of the minor objects of the State's solicitude by way of illustration, we find that at one time or another it has interfered more or less with nearly all popular games, many sports, nearly the whole of the fine arts, and many harmless and harmful pleasures which cannot be brought under any of those three heads.

In looking for the motive which prompted the State to meddle with these matters, let us give our fathers credit for the best motive, and not, as is usually done, the worst. Football, tennis, nine-pins, and quoits were forbidden, as I have pointed out, because the State thought that the time wasted over them might more advantageously be spent in archery, which was quite as entertaining and far more useful. That was a good reason, but it was not a sufficient reason to modern minds; and moreover the law failed in its object. Some other games, such as baccarat, dice, trump, and primero, were put down because they led to gambling. And gambling was objected to for the good and ample reason that those who indulge in it are morally incapacitated for steady work. Lotteries and betting come under this censure. One who thinks he sees his way to make a thousand per cent on his capital in a single evening without hard work cannot be expected to devote himself with zeal to the minute economics of his trade, for the purpose of making six per cent instead of five on the capital invested. Wealth production is on the average a slow process, and all attempts to hurry up nature and take short cuts to opulence are intoxicating, enervating, disappointing, and injurious, not only to those who make them, but to all those who witness the triumph of the lucky, without fixing their attention on the unsuccessful. Gambling, in short, is wrong; but this does not necessarily warrant the State in forbidding it. Another reason alleged on behalf of interference was, and still is, that the simple are outwitted' by the cunning. But as this is true of all competition, even the healthiest, it does not seem to be a valid reason for State action. It is also said that games of chance lead to cheating and fraud. But this is by no means a necessary consequence. Indeed, some of the most inveterate gamblers are the most honourable of men. Again, the State refuses to sanction betting contracts for the same reason that under the Statute of Frauds it requires certain agreements to be in writing; namely, to ensure deliberateness and sufficient evidence of the transaction. I think Barbeyrac overlooks this aspect of the case in his *Traite de feu*, in which he defends the lawfulness of chance games. He says:—

If I am at liberty to promise and give rny property, absolutely and unconditionally, to whomsoever I please, why may I not promise and give a certain sum, in the event of a person proving more fortunate or more skilful than I, with respect to the result of certain contingencies, movements, or combinations, on which we had previously agreed? … Gaming is a contract, and in every contract the mutual consent of the parties is the supreme law; this is an incontestable maxim of natural equity.

But, as matter of fact, the State does not prohibit, or even refuse to sanction, all contracts based on chance. It merely requires all or some of the usual guarantees against impulse, together with sufficient evidence and notification. It is true, you are not allowed to bet sixpence with a friend in a public-house that one horse will beat another in a race; you are allowed to bet a thousand pounds on the same event in your own house or at Tattersall's; but if you win and do not get paid you have no redress in a court of law. But if you bet that your baby will die within twelve months, you are not only permitted to make the bet, but, in case the contingency arises, you can recover the stakes in a Court, provided always the gentlemen you bet with have taken the precaution to dub themselves Life Assurance Society. You may also send a ship to sea, and bet that it will go to the bottom before it reaches its destination. You will recover your odds in a Court, provided the other parties are called underwriters, or some other suitable name. You may bet that some one will set fire to your house before next Christmas, and, if this happens, the Court will compel the other party to pay, though the odds are about 1000 to I—provided such other party is called a Fire Insurance Office. Again, if twenty men put a shilling each into a pool, buy a goose, a sirloin of beef, and a plum-pudding, and then spin a teetotum to see who shall take the lot, that is a lottery, and the twenty men are all punished for the sin by the State. But if a lady buys a fire-screen for £3, and the same twenty men put a sovereign each into the pool, and spin the teetotum to see who shall have the screen, and the £20 goes to the Missionary Society, that is called a bazaar raffle, and no one is punished by the State. If a dozen men put a hundred pounds apiece into a pool, to be the property of him who outlives the rest, that is called tontine, and is not only permitted but guaranteed by the State. If you bet with another man that the Eureka Mine Stocks will be dearer in three months than they are now, that is called speculation on the Stock Exchange, and the State will enforce the payment of the bet. But if you bet that the next throw of the dice will be higher than the last, that is called gambling, and the State will not enforce the payment of the bet. If you sell boxes of toffee for a penny each, on the understanding that one box out of every twenty contains a bright new threepenny-bit, that again is called a lottery, and you go to prison for the crime. But if you sell newspapers for a penny each, on the understanding that in a certain contingency the buyer may net £100, that is called advertisement, and you go *not* to prison, but possibly (if you sell plenty) to Parliament If you bet that somebody will redeem his written promise to pay a certain sum of money at a certain date, that is called bill-discounting, and the State sanctions the transaction; but if you bet that the same person will defeat his opponent in a chess-match (though similarly based on a calculation of probabilities and knowledge of his character and record), it is a transaction which the State frowns at, and certainly will not sanction. Who now will say that the State refuses to sanction bets? Gambling, speculation, raffles, lotteries, bill-discounting, life-assurance, fire - insurance, underwriting, tontine, sweepstakes—what are these but different names for the same kind of bargain,—a contract based on an unforeseen contingency,—a bet? And yet how differently they are treated by the State! Neither is it fair to charge the State with a puritanical bias against gambling. Religion had nothing to do with anti-gaming legislation; for the State both tolerates and enforces wager contracts, when they are the result of mature deliberation, sufficiently evidenced, and, as in the case of life-assurance, insurance against fire or shipwreck, etc., free from the suspicion of wild intoxication.

The State has prohibited certain sports because they are demoralising, *e.g.* prize-fighting; and others because they are cruel without being useful, *e.g.* cock-fighting, bear-baiting, bull-fights, etc. Angling it regards as useful, and therefore does not condemn it, although it combines cruelty with the lowest form of lying. Agitations are from time to time set on foot for the purpose of putting down fox-hunting on similar grounds. But, fortunately, the magnificent effects of this manly sport on the physique of the race are too palpable to admit of its suppression. Pigeon-shooting is a very different matter. Chess never seems to have fallen under the ban of the law; but billiards, for some reason which I cannot discover, has always been carefully supervised by the State.

Coming to the fine arts, they all of them seem to be regarded by the Legislature as probable incentives to low sensuality. Architecture is the solitary exception. Even music, which would seem to approach nearer to divine perfection and purity than any other earthly thing, is carefully hedged about by law; possibly, however, this is on account of its dangerous relation to poetry, when the two are wedded in song. When we come to the arts of sculpture, of painting (and its allies, printing, drawing, photography, etc.), of literature (poetry and prose), of the drama, and of dancing, we are bound to admit that in the absence of State control they are apt to run to licentiousness. But whether it is wise of society, which has been compelled to abstain from interference with sexual irregularity, to penalise that which is suspected of leading to it, is an interesting point. Fornication in itself is no longer even a misdemeanour in this country. The Act 23 & 24 Viet c. 32 applies only to conspiracy to induce a woman to commit fornication; "provided," as Mr. Justice Stephen surmises, "that an agreement between a man and a woman to commit fornication is not a conspiracy." At the same time, whatever we may think of these State efforts to encourage and bolster up chastity by legislation, it is not quite honest to ignore or misrepresent the State motive. Monogamy is not the outcome of religious asceticism. We have only to read the Koran or the Old Testament to see that polygamy and religion can be on very good terms. The highest civilisations yet known are based on the monogamic principle; and any one who realises the effect of the system on the children of the community must admit that it is a most beneficial one, quite apart from the religious aspect. Whether the action of the State conduces to this result is quite another question. All I assert is that the State is actuated by a most excellent motive.

The first observation on the whole history of this kind of legislation is that it has been a gigantic failure. That is to say, it has not diminished the evils aimed at in the smallest degree. It has rather increased them. It has crabbed and stunted the fine arts, and thereby vulgarised them. By its rough and clumsy classifications it has crushed out the appeals of Art to the best feelings of human nature, and it has diverted what would have been pure and wholesome into other channels. The man who does not see every emotion of the human soul reflected and glorified in nature's drama around him must be a poor prosaic thing indeed. But we need not go to nature for what has lately been termed suggestive-ness. We need not stray beyond the decorative art of dress, which seems to have exercised a special fascination over the sentimental Herrick. The logical outcome of systematic repression of sensual suggestiveness is State-regulated dress. Something like this has often been attempted. In England, during the thirteenth and two following centuries, dress was both regulated by Act of Parliament and

cursed from the pulpit. Eccleston mentions how Serlo d'Abon, after preaching before Henry I. on the sinfulness of beards and long hair, coolly drew a huge pair of scissors from his pocket after the sermon, and, taking advantage of the effect he had produced, went from seat to seat, mercilessly cropping the king himself and the whole congregation. The same writer, speaking of the Early English period, tells us that "long toes were not entirely abandoned till Henry VII., notwithstanding many a cursing by the clergy, as well as severe legal penalties upon their makers." I am afraid neither the cursing of the clergy nor the penalties of the law have had the desired effect, for we must remember that it was not the gold nets and curled ringlets and gauze wings worn at each side of the female head, nor the jewelled stomachers, which were the peculiar objects of the aversion of State and Church, but the sensualis-ing effect of all over-refinement in the decoration of the body.

If there is one thing more difficult than another, it is to say where the line should be drawn between legitimate body-decoration and meretricious adornment. When art critics like Schlegel are of opinion that the nude figure is far less allective than carefully arranged drapery, it is surely the height of blind faith to entrust the State and its blundering machinery to lay down the laws of propriety in the matter of dress. What we should think indecent in this country is not thought indecent among the Zulus, and since the whole question is as to the effect of certain costumes on certain persons, and since those persons are the general public in any particular country, one would imagine that the proper course to adopt would be to leave the decision upon particular cases, as they crop up, to that public. The public may be a bad judge or a biassed judge, but at least it is a more suitable judge than a lumbering State, working on general principles vaguer than a London fog.

Again, recent modern attempts to "purify" literature have brought the whole crusade into derision, and made us the laughing-stock of Europe. Yet all has been done with the best intentions—even the prosecution of the sellers of Boccaccio's *Decameron*.

But there are moral questions in which the State concerns itself, which do not fall under the heads of games, sports, nor fine arts, such as drinking, opium-eating, tobacco-smoking, and the use of other stimulants. These indulgences and artificial aids to sensual gratification have been and still are regulated and harassed by the State. Nor is it so long ago that the memory of man runneth not, since our own Government made stringent rules as to the number of meals to be eaten by the several grades of society. The Roman law actually specified the number of courses at each meal. An ancient English writer refers with disgust to the then new-fangled cookery which was coming into vogue in his day, "all brenning like wild-fire." But I have yet to learn that gluttony is on the decrease. And we have it on the highest medical authority that more deaths and more diseases can be traced to over-eating than to over-drinking, even in this tippling country. Nor have the laws enacted against sexual irregularities from time immemorial up to this day diminished, much less stamped out, the evil. We empty the casinos only to fill the streets, and we clear the streets only to increase the number and deteriorate the quality of houses of ill-fame. And during both processes we open the door to official black-mailing. The good old saying that you cannot make people moral by Act of Parliament has been, and still is, disregarded, but not with impunity. Surely the State, which has conspicuously failed

in every single department of moralisation by force, may be wisely asked in future to mind its own business.

But is it not possible to fix our eyes too persistently and fanatically on the State? Do we not suffer from other interferences quite as odious as the tyrannies of the Effective Majority? Here is what Mr. Pickard said on the Eight-hours question at the Miners' Conference at Birmingham some few years since. Somebody had pointed out that the Union could themselves force short hours upon the employers, if need be, without calling upon the Legislature. “If,” he replied, “no bad result is to follow trade-union effort, how is it possible for a bad result to follow the same arrangement brought about by legislation?” Commenting on this with approval, *Justice*, the organ of the Social Democratic Federation, says:—

This is a question which Mr. John Morley and the rest of the politicians who prate about the need for shorter working hours, while opposing the penalising of over-work, should set themselves to answer. Obviously there is no answer that will justify their position. If the limitation of the hours of labour is wrong in principle, and mischievous, harmful, and destructive of our national prosperity, it is just as much so whether effected by trade-union or by legislation.

There is a soul of truth in this. Of course we may point out, firstly, that the passing of a Bill for the purpose is no proof that the majority of the persons primarily affected really desire it, whereas the enforcement of the system by trade-unionism is strong evidence that they do; and secondly, that the Legislature cannot effect these objects without simultaneously creating greater evils owing to the necessary operation of State machinery. But I venture to say that the central truth of Mr. Pickard's remark lies a good deal deeper than this. I think we individualists are apt to fix our eyes too exclusively upon the State. Doubtless it is the greatest transgressor. But after all, when analysed, it is only a combination of numerous persons in a certain area claiming to dictate to others in the same area what they shall do, and what they shall not do. These numerous persons we call the effective majority. It is precisely in the position of a cricket-club, or a religious corporation, or any other combination of men bound together by rules. Not very long ago the Bishop of Lincoln was ruthlessly persecuted by the majority of his co-religionists because he performed certain trifling rites. I would ask the Church of England whether, in *its own interest*,—in the interest of the majority of its own members,—it would not be wiser to repeal these socialistic rules against practices perfectly harmless in themselves. Here again we have a *cause celebre* tried before the Jockey Club. Quite apart from the outside interference of the State, this club can and does sanction its own laws most effectively. It can ruin any trainer or jockey whenever it chooses; that is to say, whenever he violates the laws it has made. These laws, fortunately, are about as good as human nature is capable of, and those who suffer under them richly deserve their fate. But it might be otherwise. And even in this exemplary code there is an element of despotism which might be dispensed with. A jockey must not be an owner. Very good; the object is clear, and the intention is excellent. Of course a jockey ought not to expose himself to the temptation of riding another man's horse so as to conduce to the success of his own. No honourable man would yield to the temptation. On the other hand, few owners would trust a jockey whose own horse was entered for the same race. Now I venture

to submit that it would be better to leave the matter entirely to the jockey's own choice, and to reserve the penalty for the occasion where there is convincing evidence that the jockey has abused his trust. A jockey charged with pulling, and afterwards found interested as owner or part-owner or backer of another horse in the same race, would then be dealt with under the Jockey Club law, not before. I would strongly advise a jockey to keep clear of ownership, and even of betting (on any race in which his services are engaged), but I would not make an offence out of that which in itself is not an offence, but which merely opens the door to temptation. This has nothing whatever to do with the State or with State law. It is entirely a question of what may, broadly speaking, be called Lynch law. I have recently examined the rules of some of the principal London clubs, and I find that they are, many of them, largely socialistic. Unless I am a member, I do not complain. I merely ask whether the members themselves would not do wisely to widen their liberties. The committee of a certain club had recently a long and stormy discussion as to whether billiards should be permitted on Sundays. In nineteen out of twenty clubs the game is disallowed. The individualists predominated, and the result is that those who do not want to play can refrain; they are not compelled to play. Those who wish to play are not compelled to refrain.

I can imagine a people with the State reduced to a shadow,—a Government attenuated to the administration of a very tolerant criminal code,—and yet so deeply imbued with socialism in all their minor combinations as to be a nation of petty despots: a country where every social clique enforces its own notions of Mrs. Grundy's laws, and where every club tyrannises over its own members, fixing their politics and religion, the limits of stakes, the hours of closing, and a countless variety of other matters. There is or was a club in London where no meat is served on Fridays. There are several in which card-players are limited to half-crown points. There are many more where one card game is permitted and another prohibited. Whist is allowed at the Carlton, but not poker. Then again the etiquette of the professions is in many cases more irksome and despotic than the law of the land. Medical men have been boycotted for accepting small fees from impecunious patients. A barrister who should accept a brief from a client without the intermediary expense of a solicitor would sink to swim no more: although the solicitor's services might be absolutely worthless. Consider also the rules of the new Trade-unionism. I need not go into these. The freedom, not only of voluntary members, but of citizens outside the ring, is utterly trampled under foot. And this brings us back to Mr. Pickard and the soul of truth in his argument. I affirm that a people might utterly abolish and extirpate the State, and yet remain steeped to the lips in socialism of the most revolting type. And I think, as I have said, it is time for those of us who value freedom and detest despotism, from whatever quarter it emanates, to ask ourselves what are the true principles of Lynch law. Suppose, for example, there was no State to appeal to for protection against a powerful ruffian, what should I do? Most certainly I should combine with others no stronger than myself, and overpower the ruffian by superior brute force. Ought I to do this? Ought I not rather to allow the survival of the fittest to improve the physique of the race—even at my expense? No? Then ought I to combine with others against the freedom of the sly pick-pocket, who through his superior dexterity and agility and cool courage prevails over me, and appropriates my watch, without any exercise of brute force? Are not these qualities useful to the race? Then why should I conspire

with others against the harmless sneak who puts chicory in his coffee? If I do not like his coffee, I can go and buy somebody else's. If he chooses to offer me stone for bread at fourpence a pound, and if I am foolish enough to take it at the price, I shall learn to be wiser in future, or else perish of starvation and rid the race of a fool. Then again why should I *not* conspire? Or are there some sorts of combination which are good, and properly called co-operation, while others are bad, and properly called conspiracy? Let us look a little into this matter of combination,—this arraying of Quantity against Quality.

Hooks and eyes are useful. Hooks are useless; eyes are useless. Yet in combination they are useful. This is co-operation. Where you have division of labour, and consequent differentiation of function, and eventually of structure, there is co-operation. Certain tribes of ants have working members and fighting members. The military caste are unable to collect food, which is provided for them by the other members of the community, in return for which they devote themselves to the defence of the whole society. But for these soldiers the society would perish. If either class perished, the other class would perish with it. It is the old fable of the belly and the limbs.

Division of labour does not always result in differentiation of structure. In the case of bees and many other insects we know that it does. Among mammals beyond the well-marked structural division into male and female, the tendency to fixed structural changes is very slight. In races where caste prevails, the tendency is more marked. Even in England, where caste is extinct, it has been observed among the mining population of Northumbria. And the notorious short-sightedness of Germans has been set down to compulsory book-study. As a general rule, we may neglect this effect of co-operation among human beings. The fact remains that the organised effort of 100 individuals is a very great deal more effective than the sum of the efforts of 100 unorganised individuals. Co-operation is an unmixed good. And the Ishmaelitic anarchy of the bumble-bee is uneconomic. Hostility to the principle of co-operation (upon which society is founded) is usually attributed by the ignorant to philosophical anarchists, while socialists never weary of pointing to the glorious triumphs of co-operation, and claiming them for socialism. Whenever a number of persons join hands with the object of effecting a purpose otherwise unattainable, we have what is tantamount to a new force,—the force of combination; and the persons so combining, regarded as a single body, may be called by a name,—any name: a Union, an Association, a Club, a Company, a. Corporation, a State. I do not say all these terms denote precisely the same thing, but they all connote co-operation.

Let the State be now abolished for the purposes of this discussion. How do we stand? We have by no means abolished all the clubs and companies in which citizens find themselves grouped and inter-banded. There they all are, just as before,—nay, there are a number of new ones, suddenly sprung up out of the *debris* of the old State. Here are some eighty men organised in the form of a cricket club. They may not pitch the ball as they like, but only in accordance with rigid laws. They elect a king or captain, and they bind themselves to obey him in the field. A member is told off to field at long-on, although he may wish to field at point. He must obey the despot.

Here is a ring of horsemen. They ride races. They back their own horses. Disputes arise about fouling, or perhaps the course is a curve and some rider takes a short cut; or the weights of the riders are unequal, and the heavier rider claims to equalise the weights. All such matters are laid before a committee, and rules are drawn up by which all the members of the little racing club pledge themselves to be bound. The club grows: other riding or racing men join it or adopt its rules. At last, so good are its laws that they are accepted by all the racing fraternity in the island, and all racing disputes are settled by the rules of the Jockey Club. And even the judges of the land defer to them, and refer points of racing law to the club.

Here again is a knot of whalers on the beach of a stormy sea. Each trembles for the safety of his own vessel. He would give something to be rid of his uneasiness. All his eggs are in one basket. He would willingly distribute them over many baskets. He offers to take long odds that his own vessel is lost. He repeats the offer till the long odds cover the value of his ship and cargo, and perhaps profits and time. “Now,” says he, “I am comfortable: it is true, I forfeit a small percentage; but if my whole craft goes to the bottom I lose nothing.” He laughs and sings, while the others go croaking about the sands, shaking their heads and looking fearfully at the breakers. At last they all follow his example, and the net result is a Mutual Marine Insurance Society. After a while they lay the odds, not with their own members only, but with others; and the risk being over-estimated (naturally at first), they make large dividends. But now difficulties arise. The captain of a whaler has thrown cargo overboard in a heavy sea. The owner claims for the loss. The company declines to pay, on the ground that the loss was voluntarily caused by the captain and not by the hand of God or the king's enemies; and that there would be no limit to jettison if the claim were allowed. Other members meet with similar difficulties, and finally rules are made which provide for all known contingencies. And when any dispute arises, the chosen umpire (whether it be a mutual friend, or an agora-full of citizens, or a department of State, or any other person or body of persons) refers to the common practice and precedents so far as they apply. In other words, the rules of the Insurance Society *are* the law of the land. In spite of the State, this is so to-day to a considerable extent; I may say in all matters which have not been botched and cobbled by statute.

There is another class of club springing out of the altruistic sentiment. An old lady takes compassion on a starving cat (no uncommon sight in the West End of London after the Season). She puts a saucer of milk and some liver on the door-step. She is soon recognised as a benefactress, and the cats for a mile round swarm to her threshold. The saucers increase and multiply, and the liver is an item in her butcher's bill. The strain is too great to be borne single-handed. She issues a circular appeal, and she is surprised to find how many are willing to contribute a fair share, although their sympathy shrivels up before an unfair demand. They are willing to be taxed *pro rata*, but they will not bear the burden of other people's stinginess. “Let the poor cats bear it rather,” they say; “what is everybody's business is nobody's business. It is very sad, but it cannot be helped. If we keep one cat, hundreds will starve; so what is the use?” But when once the club is started, nobody feels the burden; the Cats' Home is built and endowed, and all goes well. Hospitals, infirmaries, alms-houses, orphanages, spring up all round. At first they are reckless and indiscriminate, and become the prey of impostors and able-bodied vagrants. Then rules are framed; the Charity

Organisation Society co-ordinates and directs public benevolence. And these rules of prudence and economy are copied and adopted, in many respects, by those who administer the State Poor-Law.

Then we have associations of persons who agree on important points of science or politics. They wish to make others think with them, in order that society may be pleasanter and more congenial for themselves. They would button-hole every man in the street and argue the question out with him, but the process is too lengthy and wearisome. They club together, and form such institutions as the British and Foreign Bible Society, which has spent _£ 7,000,000 in disseminating its literature all over the world. We have the Cobden Club, which is slowly and sadly dying of inconsistency after a career of merited success. We have scientific societies of all descriptions that never ask or expect a penny reward for all their outlay, beyond making other people wiser and pleasanter neighbours.

Finally, we have societies banded together to do battle against rivals on the principle of "Union is strength." These clubs are defensive or aggressive. The latter class includes all trading associations, the object of which is to make profits by out-manœuvring competitors. The former or defensive class includes all the political societies formed for the purpose of resisting the State,—the most aggressive club in existence. Over one hundred of these "protection societies" of one sort and another were at one time federated under the hegemony of a State Resistance Union.

Now we have agreed, for the sake of argument, that the State is to be abolished. What is the result? Here are Watch Committees formed in the great towns to prevent and to ensure against burglars, thieves, and like marauders. How they are to be constituted I do not clearly know; neither do I know the limits of their functions. Here, again, is a Mutual Inquest Society to provide for the examination of dead persons before burial or cremation, in order to make murder as unprofitable a business as possible. Here is a Vigilance Association sending out detectives for the purpose of discovering and lynching the unsocial wretches who knowingly travel in public conveyances with infectious diseases on them. Here is a journal supported by consumers for the advertisement of adulterating dealers. And here again is a filibustering company got up by adventurous traders, of the old East India Company stamp, for the purpose of carrying trade into foreign countries with or without the consent of the invaded parties. Here is a Statistical Society devising rules to make it unpleasant for those who evade registration and the census, and offering inducement to all who furnish the required information. What sort of organisation (if any) will be formed for the enforcement (not necessarily by brute force) of contract? Or will there be many such organisations dealing with different classes of contract? Will there be a Woman's League to boycott any man who has abused the confidence of a woman and violated his pledges? How will it sanction and try cases of breach of promise?

Above all, how is this powerful company for the defence of the country against foreign invaders to be constituted? And what safeguards will its members provide against the tyranny of the officials? When a Senator proposed to limit the standing army of the United States to three thousand, George Washington agreed, on condition that the honourable member would arrange that the country should never be invaded

by more than two thousand. Frankenstein created a monster he could not lay. This will be a nut for anarchists of the future to crack.

And now, to revert to the Vigilance Society formed for lynching persons who travel about in public places with smallpox and scarlatina, what rules will they make for their guidance? Suppose they dub every unvaccinated person a "focus of infection," shall we witness the establishment of a Vigilance Society to punch the heads of the detectives who punch the heads of the "foci of infection"? Remember we have both those societies in full working order to-day. One is called the State, and the other is the Anti-Vaccination Society.

The questions which I should wish to ask are chiefly these two:—(I) How far may voluntary co-operators invade the liberty of others? And what is to prevent such invasion under a system of anarchy? (2) Is compulsory co-operation ever desirable? And what form (if any) should such compulsion take?

The existing State is obviously only a conglomeration of several large societies which would exist separately or collectively in its absence; if the State were abolished, these associations would necessarily spring up out of its ruins, just as the nations of Europe sprang out of the ruins of the Roman Empire. They would apparently lack the power of compulsion. No one would be compelled to join against his will. Take the ordinary case of a gaslit street. Would a voluntary gas committee be willing to light the street without somehow taxing all the dwellers in the street? If yes, then there is inequity. The generous and public-spirited pay for the stingy and mean. But if no, then how is the taxing to be accomplished? And where is the line to be drawn? If you compel a man to pay for lighting the street, when he swears he prefers it dark (a householder may really prefer a dark street to a light one, if he goes to bed at sunset, and wants the traffic to be diverted into other streets to ensure his peace); then you will compel him to subscribe to the Watch Fund, though his house is burglar-proof; and to the fire-brigade, though his house is fire - proof; and to the prisons as part of the plant and tools of the Watch Committee; and, it may logically be urged, to the churches and schools as part also of such plant and tools for the prevention of certain crimes.

Moreover, if you compel him to subscribe for the gas in the street, you must make him pay his share of the street itself—paving, repairing, and cleansing, and if the street, then the highway; and if the highway, then the railway, and the canal, and the bridges, and even the harbours and lighthouses, and other common apparatus of transport and locomotion.

If we are not going to compel a citizen to subscribe to *common* benefits, even though he necessarily shares them, how are we to remove the injustice of allowing one man to enjoy what another has earned? Some writers[1] are of opinion that this and all similar questions can be settled by an appeal to justice, and that the justice of any particular case can be extracted by a dozen jurymen. Now, in all sincerity, I have no conception of what is commonly meant by justice. Happiness I know; welfare I know; expediency I know. They all mean the same thing. We can call it pleasure, or felicity, or by any other name. We never ask why it is better to be happy than unhappy. We understand pleasure and pain by faculties which underlie reason itself. A child knows

the meaning of stomach-ache long before it knows the meaning of stomach. And no philosopher knows it better. Expediency, in the sense in which I use the term, has a meaning. Justice has no meaning at all: that is to say, it conveys no definite meaning to the general understanding. Here is a flat-race about to be run between a strong, healthy boy of sixteen and a delicate lad of twelve. What says Justice? Are we to handicap them, or are we not? It is a very simple question, and the absolutist ought to furnish us with a simple answer. If he says yes, he will have half the world down upon him as a socialist leveller. If he says no, he will have the other half down upon him as a brutal individualist. But he must choose. Lower yet;—even supposing that Justice has a distinct connotation, and furthermore that it connotes something sublime, even then, why should I conform to its dictates? Because it is a virtue? Nonsense: *because it is expedient*. Why should I tell the truth? There is no reason why, except that it is expedient for me, as I know from experience. There is no baser form of lying than fly-fishing. Is it wrong? No. Why not? Because I do not ask the fishes to trust me in the future. That is why.

I have said that Justice is too vague a guide to the solution of political questions. We are told that, when the question is asked, What is fair and just between man and man? "you can get a jury of twelve men to give a unanimous verdict." And "that by reasoning from what is fair between man and man we can pass to what is fair between one man and several, and from several to all: and that this method, which is the method of all science, of reasoning from the particular to the general, from the simple to the complex, does give us reliable information as to what should be law."[1]

The flaw in this chain of reasoning is in the assumption that because you can get a *unanimous* verdict in the majority of cases as to what is fair between man and man, therefore you can get a *true* verdict. Twelve sheep will unanimously jump through a gap in the hedge round an old quarry if one of them will but give the lead. I do not believe that a jury of twelve philosophers, or of twelve members of Parliament, or of twelve judges of the realm, or of twelve anybodies, could decide correctly what is just and right between man and man in any one of a thousand cases which could be stated without deviating from the path of everyday life. And the more they knew, the less likely they would be to agree.

The same writer thinks the intelligence of the "ordinary elector" quite sufficient to tell him that "it would be unjust to take from a man by force and without compensation a farm which he had legally and honestly bought." Well, this is not a very complex case: and yet I doubt whether the "ordinary elector" could be trusted even here to see justice, and to do it. This recipe for making good laws forcibly reminds me of an old recipe for catching a bird: "Put a pinch of salt on its tail." I remember trying it,—but that is some years ago. I grant that, having once got at a sound method of deciding what is fair and right between man and man, you can easily proceed from the particular to the general, and so learn how to make good laws. Yes, but first catch your hare. First show us what is fair between man and man. That is the whole problem. That is my difficulty, and it is not removed by telling me you can get a dozen fellows together who will agree about the answer.

Take a very simple case. X and Y appoint me arbitrator in their dispute. There is no allegation of malfeasance on either side. Both ask for justice, and are ready to accord it, but they cannot agree as to what is justice in the case. It appears that X bought a pony *bona fide* and paid for it. That is admitted. It further appears that the pony had been stolen the night before out of Y's paddock. It is hard on Y to lose his pony—it is hard on X to lose his money. To divide the loss is hard on both. Now how can Justice tell me the true solution? I must fall back on expediency. As a rule, I argue, the title to goods should be valid only when derived from the owner. But surely an exception should be made in the case of a *bonâ fide* purchaser: "for it is expedient that the buyer, by taking proper precautions, may at all events be secure of his purchase; otherwise all commerce between man and man would soon be at an end." These are the words of Sir William Blackstone, but they are good enough for me. Therefore (and not for any reason based on justice) I should feel disposed to decide that the pony should remain the property of the purchaser. But on further reflection, I should bethink me how extremely easy it would be for two men to conspire together to steal a pony under such a law. One of them leads the pony out of the field by night, sells it to his colleague, gives him a receipt for the money, and disappears. Is this farce to destroy the owner's title? What am I to do? Justice entirely deserts me. I reflect again. There seems to be something "fishy" about a night sale in a lane. Now had the purchaser bought the pony at some public place at a reasonable hour when people are about, there would have been less ground for suspicion of foul play. How would it be then, I ask myself, to lay down the general rule that when the deal takes place at any regular public place and during specified hours, the purchaser's title should hold good; but when the deal takes place under other circumstances, the original owner's title should stand? This would probably be something like the outcome of the reflections of a simple untutored mind actuated by common sense. But it is also very like the law of England.

If I appeal for guidance to the wise, the best they can do is to refer me to the writings of the lawyers, where I shall find out all about market overt and a good many other "wise regulations by which the law hath secured the right of the proprietor of personal chattels from being divested, so far as is consistent with that other necessary policy that *bonâ fide* purchasers in a fair, open, and regular manner should not be afterwards put to difficulties by reason of the previous knavery of the seller."[1] But we have not got to the bottom of the problem yet. There are chattels *and* chattels. Tables have legs, but cannot walk: horses can. Thereby hangs a tale. Consequently when I think I have mastered all these "wise regulations," I am suddenly knocked off my stool of superior knowledge by a couple of elderly statutes—2 P. & M. c. 7 and 31 Eliz. c. 12—whereby special provision is made for horse-dealing. It is enacted that—

The horses shall be openly exposed in the time of such fair or market for one whole hour together, between ten in the morning and sunset, in the public place used for such sales, and not in any private yard or stable; and shall afterwards be brought by both the vendor and vendee to the book-keeper of such fair or market, who shall enter down the price, colour, and marks of such horse, with the name, additions, and abode of such vendee and vendor, the latter being properly attested. And even such sale shall not take away the property of the owner, if within six months after the horse is stolen, he put in his claim before some magistrate where the horse shall be found; and within

forty days more prove such his property, by the oath of two witnesses, and tender to the person in possession such price as he *bond fide* paid for the horse in market overt. And in case any of the points before mentioned be not observed, such sale is to be utterly void, and the owner shall not lose his property; and at any distance of time may seize or bring an action for his horse wherever he happens to find him.

And further refinements on these precautions have since been made.

I do not say that we need approve of all these safeguards and rules, but I do say that they testify to a perception by the Legislature of the complexity and difficulty of the question. And furthermore, if anybody offers to decide such cases off-hand on general principles, and at the same time to do justice, he must be a bold man. For my part, the more I look into the law as it is, the more do I see in it of wisdom (not unadulterated of course) drawn from experience. The little obstacles which have from time to time shadowed themselves upon my mind as difficulties in the way of applying clear and unqualified general rules to the solution of all social disputes, are brought into fuller light, and I perceive more and more clearly how hopeless, nay, how impossible it is to deduce the laws of social morality from broad general principles; and how absolutely necessary it is to obtain them by induction from the myriads of actual cases which the race has had to solve somehow or other during the last half-dozen millenniums.

I regard law-making as by no means an easy task when based on expediency. On the contrary, I think it difficult, but practicable: whereas to deduce good laws from the principle of Justice is impossible.

One word more about Justice. I have said that to most people the term is absolutely meaningless. To those who have occasional glimmerings, it conveys two distinct and even opposed meanings—sometimes one, sometimes the other. And it has a third meaning, which is definite enough, but merely negative; in which sense it connotes the elimination of partiality, I fail to see how any political question can be settled by that. That the State should be no respecter of persons, that it should decide any given case in precisely the same way, whether the litigants happen to be A and B or C and D, may be a valuable truth, without casting a ray of light on the right and wrong of the question.

In this negative sense of the term I will venture to define Justice as the Algebra of Judgments. It deals in terms not of Dick, Tom, and Harry, but of X, Y, and Z. Regarded in this light, Justice may properly be described as blind, a quality which certainly cannot be predicated of that Justice which carefully examines the competitors in life's arena and handicaps them accordingly. Consider the countless questions which Impartiality is incompetent to answer. Ought a father to be compelled to contribute to the maintenance of his natural children? The only answer we can get from Impartiality is that, if one man is forced, all men should be forced. Should a man be permitted to sell himself into slavery for life? Should the creditors of an insolvent rank in order of priority, or *pro rata*? Suppose a notorious card-sharper and a gentleman of unblemished character are publicly accused, untruly accused, of conspiring together to cheat, should they obtain equal damages for the libel?

To all these questions Impartiality is dumb, or replies oracularly, "What is right for one is right for all." And that throws no light on the subject.

In short, it is easy to underrate the difficulty of finding out what is fair and right between man and man. To me it seems that this is the whole of the difficulty. And although I think that this can best be overcome by an appeal to expediency, I must not be understood as contending that each particular case must be decided on its merits. We must be guided, as we are guided in our own personal conduct, by middle principles which have stood the test of time and experience. Do not steal. Do not lie. It is by the gradual discovery of similar middle principles by induction from the disputes of everyday life that we shall some day find ourselves in possession of true and useful guides through the labyrinth of legislation and politics.

To sum up; I have tried to show that the right course for the State to adopt towards its own citizens—Group Morals—cannot be discovered by deduction from any abstract principles, such as Justice or Liberty; any more than individual morals can be deduced from some underlying law of Virtue. The rules of conduct by which States should be guided are intelligible canons based on centuries of experience, very much like the rules by which our own private lives are guided; not absolutely trustworthy, but better than no general rules at all. They are usually described as the laws of the land, and in so far as the expressed laws really do reflect the nomological laws actually at work, these laws stand in the same relation to the State as private resolutions stand to the individual citizen. In law, as in all other inductive sciences, we proceed from the particular to the general. The judge decides a new case on its merits, the decision serves as a guide when a similar case arises; the *ratio dccidendi* is extracted, and we have a general statement; these generalisations are themselves brought under higher generalisations by jurists and judges, and perhaps Parliament; and finally we find ourselves in the presence of laws or State morals as general as those cardinal virtues by which most of us try to arrange our lives. That the generalisations made by the Legislature are usually false generalisations is a proposition which, I submit, is capable of proof and of explanation. It is wise to obey the laws, firstly, because otherwise we come into conflict with a stronger power than ourselves; secondly, because in the great majority of cases it is our enlightened interest to do so; the welfare of individual citizens coinciding *as a rule* with the welfare of the race, and tending to do so more and more. History shows that (probably as a means to that end; though of this we cannot speak positively) the State's sphere of action is a diminishing one—that as it moves forward it tends to shed function after function, until only a few are left. Whether these duties will pass into the hands of voluntary corporations at any time is a question of the greatest interest; but it is observable that the latest functions remaining to the State are those which are most rigorously performed. And this seems to point to the future identity of the State (in the sense of the sovereign power) with the widest voluntary association of citizens—an association based on some common interest of the widest extent. Thus it is probable that even now an enormous majority of persons in this country would voluntarily forgo the right of killing or robbing their neighbours on condition of being guaranteed against similar treatment by others. If so, the voluntary society which Anarchy would evolved, and the State which ancient Socialism has evolved, tend in the long-run to be one and the same thing. The State or

Voluntary Association, by whatever name known, will cease to compel unwilling individuals to join its ranks, because coercion will be no longer required.

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CHAPTER III

The Rights Of Majorities

The doctrine of the Divine Right of the Majority, or, in secular phraseology, the doctrine of "counting heads to save the trouble of breaking them," can be carried, and is carried, a great deal too far. There are two principal qualifications of the doctrine which are usually lost sight of. Upon these it is important to lay stress, because modern democratic State socialism is based upon their non - recognition. Firstly, the units of society are *not* equal. Under a system of adult suffrage, it is quite conceivable that on a question of family law nearly all the women might be found voting on one side, and nearly all the men on the other. In such a case it is absurd to pretend that counting heads would be a peaceful substitute for fighting it out. Similarly at the present day, in all democratic countries under a very extended franchise, apart from sentiment, ten rich men count for more, *as a fact*, than a thousand wage-receivers. It is merely a foolish fiction to pretend that the majority vote is a test of the will of the people; because the will of the people, like the will of an individual animal, is the resultant of forces, operating in various directions. That which the doctrine presumes that we want to ascertain is, What would be the result if each question were fought out? And the answer is certainly not always to be found by counting heads, pro and con.

The second flaw in the doctrine is the false assumption that every one is prepared to fight for that which he desires to obtain—that the desire is uniformly urgent. This is not true. A big dog will seldom attack a little dog in possession of a bone. He desires the bone. So does the little dog. But their motives are not equally urgent. In a state of unorganised anarchy,—anarchy as it is pictured by those who do not understand it,—if two unequally-matched men meet over a prize coveted by both, they do not, as a fact, take each other's measure and decide the question accordingly. The stronger man may be actuated by a weaker desire. He may be less hungry or more averse to trouble and pain. And, in any case, it is probably, on the average, the best economy from his own point of view, to buy off the weaker man by making a division of the prize—not necessarily an equal division, but one satisfactory to the weaker man in view of his inferiority. To apply this consideration to practical politics, it may be true that the majority in this country are favourable, say, to universal vaccination. It does not follow that a compulsory law embodies the will of the people; because every man who is opposed to that law is at least ten times more anxious to gain his end than his adversaries are to gain theirs. He is ready to make far greater sacrifices to attain it. One man rather wishes for what he regards as a slight sanitary safeguard; the other is determined not to submit to a gross violation of his liberty. How differently the two are actuated! One man is willing to pay a farthing in the pound for a desirable object; the other is ready to risk property, and perhaps life, to defeat that object. In such cases as this it is sheer folly to pretend that counting heads is a fair indication of the forces behind.

It is therefore easy to endorse the conclusion reached by an able anarchist, Mr. Victor Yarros, when he says:—

In cases where the issue depends on the number of heads, and is pre-detennined in favour of the majority, it is no doubt wise and desirable to avoid violence by ascertaining and submitting to the inevitable, but we know very well that minorities are not necessarily doomed to defeat in their struggle with majorities under the present conditions rind means of warfare. Even individuals can, single-handed, withstand majorities and defy them. The counting of heads can no longer be regarded as a sure way of determining the probable outcome. Unless the majority, duly and prudently appreciating this important change, with all its bearings, agrees to accept certain principles, and to respect the rights of minorities, cases may arise in which object-lessons as to the power and influence of minorities in modern times shall be found necessary.

Thus far we are agreed. We advise majorities, for their own sakes, not to bring the minorities to bay. The result may be either painful or humiliating. It is not wise to threaten what you do not mean to perform. Minorities mean business: majorities frequently do not.

But I cannot agree with the same writer that "*any* method is justifiable in our war against the aggressive State." It would be exceedingly wrong of Mr. Yarros to burn down an hotel for the purpose of extinguishing an enemy, even though the success of his method was assured. Similarly, it is usually wrong to make war on the State by throwing bombs, even in self-defence, or by using dynamite. It is fair to terrorise one's oppressors, but it is not fair to terrorise one's friends, for the sake of getting at one's foes. "If," says Mr. Yarros, "I were confronted with the alternative of adopting either dynamite or ballot-box force as a weapon against the State, I should choose dynamite without a moment's hesitation." With equal readiness I should choose the ballot-box. Breaking heads is the final test of right. Admitted. But, as Mr. Justice Stephens said, "We count them to save the trouble." And that process is the voting-box. Surely it is not always a foolish bargain to count soldiers and adjudicate the battle in accordance with the respective numbers concentrated in the field.

Once upon a time I said that "when the law is broken, it is the bounden duty of the Executive to punish the law-breaker, even when the law is bad and the law-breaker is a conscientious and public-spirited citizen. Any sign or hint that private will may overpower the public will, as embodied in the laws, is the worst and most fatal sin that a Government can commit." Quoting this passage, a friend wrote: "Kindly allow me to ask if you would give the private citizen correlative advice—namely, that it is his bounden duty to obey the law, good or bad." I cannot see that this is the correlative advice. My advice to the tiger in the jungle is to kill and subdue his rivals, and to do the best for himself. Surely the correlative advice to his rivals is not to submit and die. The correlation is expressed in the saying, "Pull Devil, pull Baker," and not in the saying, "Pull Devil, yield Baker." When Society and the Individual differ, each must try to overpower the other if possible. If the power is very unequal, prudence, and prudence only, would dictate compromise, or even submission. My friend illustrated his position by a reference to the English and German vaccination laws. In Germany,

he says, any resistance on the part of the parents is punished by imprisonment, *while their children are forcibly vaccinated*. "Now, I wish to know whether you would consider as heinous and morally culpable the conduct of an administrator of such a law, who allowed a parent to disobey that law on the ground that he conscientiously believed the operation would imperil his child's health, and perhaps hurry it to the grave?"I answered frankly, Yes. *If* such were the law in England, I should censure the administrator who shrank from enforcing it to the letter. But I should censure far more severely the craven cur who submitted to such a law. In my opinion it would be the duty of the administrators of the law to carry it out, and the duty of the citizen to shoot the *scoundrel* who attempted to perpetrate the outrage. Of course such a law could not be enacted in England; but if, by an accident, such an Act should be passed, the consequences of the conflict between the State and the citizens would be such as to bring about its repeal after the first catastrophe. The servile docility of Germans is a standing psychological puzzle. Clearly, the citizen who takes upon himself to quarrel with the State must count the cost and take the consequences. He must not complain if he gets the worst of it. But those who are appointed by the Odd Man to carry out the laws (such as they are) are false to their trust if they fail to do so.

The correspondence appeared in a paper called *Jus*, of which I was then editor, and was followed by a characteristic letter from the late Lord Bramwell:—

Sir—In *Jus* of 18th November appeared a paragraph to which I respectfully object. I regret to see it in a publication entitled to authority from its two qualities of ability and honesty. You say, speaking of children being forcibly vaccinated, "If the German vaccination law were the law in England we should censure the administrator who shrank from enforcing it to the letter. But we should censure far more severely the craven cur who submitted to such a law. In our opinion it would be the duty of the administrators of the law to carry it out, and the duty of the citizen to shoot the scoundrel who attempted to perpetrate the outrage."

How can this be? How can a man be a scoundrel for doing his duty? How can it be the duty of any man to shoot him for so doing? Please to remember that you do not strengthen your case by calling names. I should be the craven cur you speak of. I should think it my duty to obey the law or leave the country where it existed. The sovereign power honestly and for the good of the community enact a law. Surely it is the duty of the citizen or subject to obey it. Why may not every man disobey any law he disapproves of, if you are right? There are plenty of conscientious crimes, but we punish them of necessity.—Yosurs, etc.,

Bramwell.

My reply setting forth the ethical position was this:—The whole duty of man is his duty to himself. Every apparent duty to others is merely derivative; and the duty of the citizen to obey the law is merely based on the self-regarding prudence which warns him not to resist an overpowering force. I cannot accept the doctrine of the divine right of the Odd Man. It is our duty to defer to the will of the majority, when the evil consequences of opposing it are probably greater than the evil consequences of conforming. But in certain cases the balance is the other way, and then it is surely the

duty of the citizen to disobey the law, especially if he thinks that he may be able to overmaster the majority. And this is not invariably a difficult task. In the case of a father honestly convinced that vaccination is injurious to health, and exceedingly immoral withal, I still feel that he would be justified in resisting State coercion. I quite admit that probably he would be wise to leave the country rather than resort to violence, because he would almost certainly get the worst of it,—but for that reason only. Otherwise I cannot see why he should leave the country in preference to turning the majority out, or making their lives such a misery and a torture to them that they would go of their own accord. I will not submit to injury merely because it is done in the name of a large crowd—that is, not if I can help it. There I claim the right to the luxury of revenge.

A hired assassin, one who enters into a contract with A to kill B, is not really actuated by malice, and it may be said that it is his duty to fulfil his contract. The title of "scoundrel" should be reserved for his principal, and not applied to the agent. So it might be urged. I am not quite clear that vicarious villainy is to be condoned merely by reason of the fact that the principals are a majority of the people. Thus, if the State does wrong, or proposes to do wrong, its agents should ask themselves whether they are prepared to accept the responsibility, or whether they ought to resign. Lord Bramwell said that, as a citizen, he would either obey the law or leave the country. He would probably, therefore, as an administrator, either carry out the law or resign. And that duty is just what I was anxious to insist on. But then an administrator can always resign, whereas a citizen cannot always leave the country. In that case the choice lies between submitting to the tyranny of the Odd Man or fighting against, superior force. For my part I do not quite admit the claim of the majority to the country. Upon what right does it rest? Simply upon the probable superiority, in brute force, of the larger number. But it must not be forgotten that the stronger will often yield to the weaker when the prize is not worth fighting for. In a battle between a dog and a rat, the dog sometimes retires. Now, this is because the rat is fighting for his life, and the dog is fighting for fun. Similarly, if a determined minority show their teeth; if a few of their members sacrifice themselves for the—cause, and *hurt* the majority—hurt them badly, make them uncomfortable, fill them with fear—the many will frequently give way. The game is not worth the candle if they have to suffer so much. Now this is true not only in a bad cause but in a good one. Religious tolerance in this country was won by the men in the fire. Say what we will, the Irish agitation has made what progress it has made, by appealing to the fears of our rulers,—some of them.. Walking about with half-a-dozen detectives before and behind is a great strain on the moral fibre of a man. Hidden stores of dynamite-perhaps next door—moonlight raids—occasional assassins—all conspire to make the easy-going very anxious to be on the side of these hateful forces. Their frame of mind is like that of the quaking wretches who are said to pray to the devil. In short, if a resolute minority can do so much in one cause, why not in another? And in any case it is surely their *duty* to resist to the bitter end, though it may not be expedient. At all events it will be admitted that if the doctrine of passive obedience to the Odd Man had been universally held by our forefathers, there would have been no Smithfield fires to light the way to liberty.

An agent cannot shirk the responsibility of wrongful acts by pleading that his principal is Legion. Just as a crowd of fools do not make a wise man, so the fact that

the bullies are in a majority does not convert their arbitrary rule into liberty. At the same time, the proper word to describe one who carries out a bad law is perhaps not "scoundrel." I will not substitute a more suitable term, but leave it to lovers of freedom to christen the *hired assassin* of their liberties for themselves. As to the duty of the citizen to conform to the laws, there is little doubt that is as sacred as any other ethical middle principle. As a general rule of conduct it is sound. Let us avoid casuistry. When is it right to lie? When to steal? When to kill? Similarly, the question, When is it right to break the laws? may be left to casuists. The general answer is, Never. And it is a good answer. The exceptions are rare, I will, however, just quote one authority on the point. Emerson says: "Good men must not obey the laws too well." He elsewhere says: "Any laws but those which men make for themselves are laughable. This is the history of governments,—one man does something which is to bind another. A man who cannot be acquainted with me, taxes me; looking from afar at me, ordains that a part of my labour shall go to this or that whimsical end, not as I, but as he happens to fancy. Behold the consequence. Of all debts, men are least willing to pay the taxes. What a satire is this on government! Everywhere they think they get their money's worth, except for these. The less government we have, the better; the fewer laws, and the less confided power."

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CHAPTER IV

Adulteration

It is a stock argument of State socialists that the Adulteration Acts are socialistic, and that no one would go so far as to contend for freedom to adulterate. Individualists admit that these Acts are socialistic, but they further contend that all such Acts have hitherto been dismal failures. Indeed all parties admit as much. But is it not possible to have good laws, the effect of which will be to discourage the practice of adulteration without interfering with the equal liberty of individuals? If socialistic laws have failed, let us try laws based on the alternative principle. *Caveat emptor* is the excellent maxim of law which applies in this country to buying and selling. In the absence of a special warranty, or the use of some such word as "genuine," it is presumed that the vendor offered the thing for sale, and that the purchaser, after examining the thing for himself, bought it for what it might be worth. This is an excellent principle. But it must not be strained so far as to override the universally acknowledged meanings of words. And it is not so strained in certain classes of cases. For example, if the vendor describes a ring as a gold ring which turns out to be aluminium bronze, he cannot plead that by gold he simply meant yellow metal (which, by the way, was the original meaning of the word), or that aluminium bronze is known as Abyssinian gold in the market, or that the purchaser had an opportunity of examining the ring for himself. Nothing of the sort. He said gold; and the public knows what is meant by gold. Now if *gold* means something definite, to which the public attaches a definite meaning, why should not *beer* or *cloth* also be held to mean a definite substance? The only answer is that as a fact the public does attach a precise definition to some names of things, and that it does not to others.

But if this is so, it would seem just, where those precise definitions do exist in the public mind, that parties dealing should be presumed to have used the terms in the usually accepted sense; as in the case of gold, and certain raw materials such as oak and mahogany. If a vendor sells an oak chest as such, he cannot plead *caveat ctnptor* when the purchaser finds that it is stained deal. Now there are certain substances which may be said to be precisely defined in the public mind, and yet whose definitions are not recognised in law. This should be altered.

But how is the question to be settled whether there is a current recognised definition or not; and if so, what is it? In the one possible way, by reference to a jury. The State cannot or should not itself undertake to define *milk, butter, beer, tobacco, coffee, calico*, etc. etc. It is sure to blunder if it makes the attempt. The question whether *tobacco* means the leaf of the tobacco plant, or a mixture of such leaves with the leaves of other plants, or any leaves whatever treated in a certain way, is a question for a jury, assisted possibly by experts. It is not a question for the Legislature. This is the first principle to be acted upon by individualists in their efforts to put a stop to adulteration. Even when the general public is unable to say exactly what is the nature or composition of a substance named, it is often in a position to say positively what is

not an ingredient in its composition. For example, the public cannot yet define *calico*. It is dimly understood that it is a kind of cotton fabric, but whether the admixture of flax or wool would be tantamount to adulteration is a question the public is not qualified to answer. When it is asked whether china clay is an ingredient in the composition of calico the public at once replies No. Hence we are ripe for the recognition of negative definitions, even where positive definitions are hardly formulated. It would be absurd to refuse to pay a tailor's bill on the ground that what was described as a cloth coat in reality contained an admixture of cotton; because cloth does not generally mean a pure woollen fabric. It would not be absurd to refuse payment on the ground that the fabric was felted instead of woven; for "woven" is a recognised attribute of *cloth*.

Having arrived at our proximate definitions, positive or negative, what is to be the next process? To begin with, away with public inspectors and analysers (only the State could invent such a word as *analyst*). It is the business of those who object to the adulterated article to set the law in motion. Let it be supposed that a barrel of beer has been bought and sold. The purchaser finds that the liquid contains a large quantity of foreign ingredients, other than hops and malt He sues the vendor for the money paid. Is the question to be settled in a court of civil or criminal jurisdiction? That is one of those questions which always crop up in this country. It seems to be overlooked that it is quite possible to injure the community and a particular individual by one and the same act, and that the public injury may not be sufficiently important to require punishment, unless the injured person takes the trouble to move in the matter. In Rome one could recover stolen goods, or damages for their loss, by what we should call a civil process, without in the least affecting the relation between the thief and the public by reason of the theft. Restitution first and punishment afterwards was the rule. Why should it not be so in this country? Why cannot we sue a libeller for damages, if any, and afterwards prosecute for criminal libel? In short, why cannot our civil courts treat adulteration cases otherwise than as breaches of contract? The proper course to adopt would be for the purchaser to bring an action against the vendor for the recovery of the money paid for the goods on the ground of their not being what they were represented to be. If the jury should find for the plaintiff, then the price should be returned, and the vendor should not recover back the goods complained of. The effects of this arrangement would be, firstly, to graduate the penalty for adulteration in accordance with the price of the goods sold; secondly, to put the vendor of adulterated goods completely at the mercy of his customers; thirdly, to do away with the necessity for rewarding informers; fourthly, to subject the wholesale dealer to far greater risk and danger than the retailer, as he would stand to lose very large sums; and lastly, to relieve the Court of the onus (where the sophisticated material was not positively injurious) of assessing damages. The purchaser would be recompensed for his risk and trouble and annoyance, and the vendor's goods would be forfeited, not to the State or to an informer, but to the injured party. That the penalty should be graduated in proportion to value is not a new principle. Smugglers understand it very well. This system, supported as it would be by voluntary anti-adulteration associations, which in the present state of the law are discouraged in every way, would speedily effect a marked change, and no one would suffer from the change except the fraudulent themselves. Such an association would be more than a match for the adulterating retailer. It would have its own office and analysers; the consumer

would be spared all trouble in the matter; and the retailer would not be able, as he now usually is, to shift the blarne on the shoulders of the wholesale merchant. The latter would be the first to turn from the wickedness that he has committed, and to do that which is lawful and right.

The case of *White v. Baywatcr*, which came some time ago before the Lord Chief Justice, turned upon the meaning of the words "tincture of opium." The defendant, a Sheffield chemist, had sold as such three ounces of a decoction which, on analysis, turned out to be only about 75 per cent of the strength described in the British Pharmacopœia. The local magistrate declined to convict, on the ground that the substance sold was undoubtedly tincture of opium, that the strength was not warranted, and that the rule *caveat emptor* applied; inasmuch as it was the business of the purchaser to specify the strength he required. The magistrate does not seem to have been represented on appeal, which is to be regretted. Counsel for the appellant contended that the tincture sold was "not of the nature or quality of the article demanded." "Do you say that it was not the article known as tincture of opium?" "Just so; it is as though a customer asked for brandy and was given a mixture of one-third water; surely that would not be the article demanded." If this suicidal analogy satisfied the Court, it is very surprising. Did counsel suppose that when he asks for spirits of any kind, he gets, or has a right to expect, pure alcohol, or proof spirit in the chemical sense of equal parts of alcohol and water, or even the proof spirit of pharmacy, which differs slightly from the former. Why, the brandy which he gets when he asks for brandy is a mixture containing a good deal more than one-third water. He was on firmer ground when he deserted the argument of common - sense and relied on the wording of section 15 of the Pharmacy Act, though here he seems to have felt a little shaky. "The strength and quality of drugs vary," said Lord Coleridge; "need they be of the strength of the British Pharmacopœia?" The reply seems somewhat foggy, if not self-contradictory: "Not perhaps precisely, but the drugs must be of the same strength as the British Pharmacopœia." Now the British Pharmacopœia is nothing less than a *fasciculus* of Government definitions of the most detailed character. It was sanctioned in 1863 by the Medical Council, and substituted for the then existing pharmacopœias, and adopted by the Pharmacy Act, 1868. Whether it ought to be a *penal* offence to sell drugs which are pure and free from deleterious ingredients, and which certainly are "of the nature" though not of the strength demanded, is a question of policy. The fact remains that such is a statutory offence in those cases where the State has enunciated a distinct definition. Counsel for the appellant only damaged his case by trying to bring it under a general principle of commercial law. Lord Coleridge made matters worse by the wording of his decision: "It appears from the case that ' tincture of opium' is a term well understood in the trade, and that the article sold by the defendant was not that article." Mr. Justice Smith concurred, saying, "Tincture of opium means the article understood in the trade by that term." These are not good grounds for the conviction. The grounds are that the State has defined the term "tincture of opium," and the article sold was not as defined.

In the case of *R. v. Bryan*, D. & B. 265, where the defendant had described some spoons as of the best quality and equal to Elkington's A. (a description well known in the silver trade), and having as much silver in them as Elkington's A., it was held by ten judges that the language used was mere puffery. "This case is often," says Sir

James Stephen, “but, I think, wrongly supposed to decide that a misrepresentation *as to quality* cannot be a false pretence. This depends on the further question, whether the representation is made by means of alleging the existence of a fact which does not exist.” Clearly, therefore, if “Elkington's A.” had been defined by Act of Parliament, there would have been a specific false pretence as to an existing fact, but in the absence of such definition a mere customary trade description as to quality (including strength) is not enough to justify conviction.

The case shows how necessary it is to revise the whole system of law regarding adulterations. As it is, the statute book is being inundated with little separate definitions of milk, butter, beer, etc., without any attempt at consolidation or generalisation. And, together with this plethora of legislation, we have an utterly unworkable and ineffectual system of administration.

The lame and impotent efforts of the Legislature to put a stop to the increasing practice of adulteration have had the lamentable result of stimulating and protecting it. The Adulteration Acts (under various titles) have actually stood between the fraudulent trader and the arm of justice. The evils occasioned by this state of affairs is met, as usual, by a series of Bills aiming at the punishment of offenders of this class, first in one department of trade and then in another. Of late years Acts have been passed and Bills have been brought in dealing with fraudulent sales of butter, and providing for the purity of beer.

For several sessions Parliament has been much exercised about the purity and strength of drugs. Raids have been made upon the milkman with the unfortunate result of making the authorities a laugh-ing-stock. Heavy penalties have been attached to the admixture of foreign substances with tea and tobacco, more for the sake of the revenue than for the sake of the consumer. Coffee and cocoa have been separately protected by the State against the wiles of the dealer, with the sole result that it is long odds against any one of the first ten samples examined being really unadulterated. Bread and flour have also been the subject of the State's special solicitude; and heavy penalties have been imposed upon purveyors of bad meat; though this hardly comes under the head of adulteration. The main result of the paternal care of Government in the particular matter of pure wine seems to be that more sherry is drunk in London alone than is grown in Spain, and that the British gooseberry enters into the composition of sparkling wines far more largely than the grape of Champagne. In the good old days of the curfew bell, which Sir John Lubbock looks back upon with such yearning, wicked brewers who made bad beer were condemned to stand in the dung-cart, while bakers of bad bread went to the pillory. Nowadays our rulers are loath to be so rude to the manufacturer, who may be an important personage. By 23 & 24 Viet. c. 84, the small retailer is assailed or rather threatened. What the State is pleased to call public “analysts” are appointed, who are bound to analyse bread for a fee of from half-a-crown to half-a-guinea. If the baker is found out, he incurs a penalty; but, as a disappointed reformer observes, “the analyst is very rarely appealed to; firstly, on account of the uncertainty of the analytic result; secondly, on account of the fee; thirdly, because the victim who goes to all the trouble *pro bono publico* is a fool for his pains.” Anyhow, he is certainly a determined altruist. When the retailer is found out, which happens occasionally in very flagrant cases, he usually and very

successfully lays the blame on the wholesale dealer. How was he to know of the existence in his tobacco of the forbidden "substance or material, syrup, liquid or preparation, matter or thing"? Somebody should attack the wholesale merchant; nobody takes the trouble; the matter drops, and the tobacconist's friends condole with him on having been made the scapegoat of some undiscovered rascal whose name never transpires. Note the marvellously searching and exhaustive enumeration of forbidden ingredients—not only substances, but also materials, to say nothing of matters and things. How can the wrong-doer expect to escape? For even if the adulterator avoided making use of substances or materials, matters or things, the chances are he would be caught with a "preparation."

But we have not yet fathomed the depth of the State socialist's artfulness. In order to remove temptation from the path of the brewer and beer retailer, a list of ingredients is published by the all-wise State, which knows all the tricks of the trade, imposing a penalty of £200 on any person who shall be found out having any such substances *or* materials in his possession, whether in the beer or otherwise. Now, how foolish the brewer would be to keep these proscribed matters or things on his premises, and how much wiser would he be to order them as they are required from the chemist. Quite so, but the State saw through this. Therefore, with the unerring foresight of a thought-reader, it enacted (56 George III. c. 58, sec. 3), that any chemist, druggist, or other person who shall sell the articles mentioned in sec. 2 to any dealer in beer shall be fined £500. The reason why the chemist, druggist, or other person suffers two and a half times as much as the delinquent himself who intends to put them in the beer, is doubtless based on the fable of the trumpeter, who, too cowardly to fight himself, urged others on to the fray. Well, the effect of all these dreadful penalties is that legislators now propose to coerce the beer dealer himself to turn informer against his own wares. Some say he must be made to tell his customers "*that* other ingredients are contained in his beer"; while a more radical and thorough sect of reformers say he must be made to tell his customer "*what* other ingredients are contained in his beer." Two separate Bills were not long since brought in embodying these two rival principles. While they are fighting it out, it is consoling for the British consumer to reflect that the substance said to be of all condiments the most adulterated is pepper. Strange to say, this spice is specially protected, under a penalty of £100, by 59 George III. c. 53, sec. 22.

In its natural state arsenic is white. It might be mistaken for sugar from appearance alone. Such things have happened, but very rarely. The State in its wisdom steps in and says, Why should arsenic be white? Let it be blue. The consequences are obvious. Purchasers are led to rely solely upon their sense of colour as a test of the article. Is it blue? No, then make wedding-cakes of it. It cannot be arsenic. But it is arsenic, and twenty persons are poisoned by it, and the "analyst" finds that the icing on one cake contains 22 per cent of arsenic,—white, not blue. Sugar of lead, which is almost as dangerous as arsenic, is still allowed to go about in its virgin white, looking just like sugar. When somebody has swallowed enough to kill him without tasting or testing it, the State will direct that in future it must be coloured pink. Of course there are a great many careless fools in the world, but whether their diminution by arsenic-swallowing would not result in the evolution of a more wideawake race, is a cold-blooded

question which will elicit a good many hot-blooded answers. Still, it may be so for all that.

The Public Health Act, 1875, seems to be a useful kind of measure. One of the functions of the State, which even the extremest individualists admit, is that of protecting citizens against murderers, poisoners, incendiaries, burglars, and other aggressors. If there is one form of poison more disgusting, loathsome, and dangerous than another, it is putrid meat. Persons exposing for sale meat which is unfit for human food are public enemies, and it is the duty of the State to get rid of them somehow or anyhow. A short time ago, an under farm bailiff was convicted under the Public Health Act of this very offence, and punished to the extent of £100 all told. Not satisfied with that he appealed. The appellant proved that the meat did not belong to him, and that he acted under the direction of the head bailiff. The Solicitor-General said the effect of his learned friend's contention would be to get rid of the whole value and effect of the Act. In order to punish offences against the Act it was necessary that those who dealt with the meat as if it belonged to them, should be held to be the persons to whom it did belong, or in whose possession it was when exposed for sale. He maintained that the appellant had acted throughout as if he were dealing with the meat on his own account. However, the ownership of the meat got shuttle-cocked about in Court with the result that it belonged to nobody in particular, and least of all to the unfortunate under-bailiff who had been so cruelly victimised by the local magistrates, and who after all had only done as he was told, good soul. As for the meat, perhaps some of us have eaten it by this time; or it may have found its way, through a long chain of middlemen, ownerless to the last, to the omnivorous sausage-shop of East London. It is some consolation to know that although the Public Health Act is incapable of dealing with diseased meat, it is a veiy powerful obstacle to a rational system of drainage. It is very careful as to the number of cubic feet of air that a room should contain, but it breaks down helplessly in its efforts to keep the sewage-gas out of that air. Altogether the Act is interesting as a study in nineteenth-century legislation.

It is a significant fact, and well worth notice, that the imports of butterine for 1887, after the passing of the Margarine Act, were larger by over 300,000 hundredweight than they were in 1886, for the corresponding ten months. This is not guesswork or prophecy, it is fact and history. Oh! far-seeing Council of Legislators! It was an honest proceeding to change your name from Witenagemote, the assembly of the wise, to Parliament, the crowd of jabberers.

The Government “analyst” at Somerset House during the Margarine campaign pointed out that an experienced butter merchant has great difficulty in distinguishing between butter and butterine, and an ordinary Revenue officer would be quite incapable of detecting the difference. He added that butterine is a wholesome commodity. Others, who gave evidence before the Select Committee of the House of Commons on Oleomargarine, maintained that it is a good deal more wholesome than the inferior classes of butter. Now, if a Revenue officer is quite incapable and an experienced butter merchant has great difficulty in distinguishing between two equally wholesome and similar substances by the sense of taste or otherwise, what has the consumer to complain of, except that he pays something less for the stuff? One

would think that it is an easy matter to distinguish between the two by the taste of one and the absence of taste in the other. Persons whose sensory organs are more sensitive than those of "ordinary Revenue officers," Government "analysts," and experienced butter merchants, will do well to taste their butter, and, if they like it, to buy some more at the same place. If they do not like it, let them try another butter-man. The "analyst's" advice was less simple in one sense. He said the shopkeeper should be "compelled to put a label on butterine"; but as he had just before said that the unfortunate man cannot tell butterine from butter, the only safe course would be to label all his butter "butterine," and to tell his customers that much of it is pure butter, but that it is well to be on the safe side. By the way, if a butter-man sold a substance as butterine which on analysis turned out to be pure butter, could he be prosecuted?

Is it not singular that while the State is session by session frittering away the public time devising artful schemes for entrapping those who wish to manage their own affairs on their own responsibility, no rational attempt should be made to entrap those who wish to manage their affairs to the detriment of their neighbours? Thus, a few friends may not enjoy a late supper party at an hotel, but any one of the party is at liberty to put any amount of half poisonous and disgusting ingredients into beer and bread and wine and pickles, and sell them as pure with the most complete impunity. If the State would attend less to other people's business, there might be some hope of its minding its own. Is there not a single member of either House of Parliament capable of bringing in a Bill for putting a stop to this iniquitous practice of adulteration? All that is wanted is the removal of the Government shield which now protects the adulterator. That is all. We do not require State definitions of beer and butter and cloth and pickles. The public knows very well the meaning of those homely terms without an authorised Government dictionary. Butter means butter, that is a well-known dairy product of milk. It does not mean refined animal fat, or annatto, or mineral oil, or mallows. Animal fat and olive oil are very nutritious and wholesome substances, and if economy is a consideration, they make a good economical substitute for butter. But they are not butter; and if sold as such the responsibility should rest on the vendor. So with beer; quassia is an excellent bitter, and goes a great deal further than hops; and camomile is probably even more wholesome than hops, but they are not hops, and the public understands beer to be made from hops and malt without any schooling by the State. If the public does not understand that, then there is no harm in substituting the camomile. If the public is satisfied with malt liquor embittered anyhow, why interfere?

But how are we to know, asks the befogged despot from Little Peddlington, how are we to know what the public understands by the term "beer"? The answer is as simple as dipping in Jordan—ask them. Do not begin by telling them what they ought to mean, or what they *would* mean, if only they knew what they meant; begin by assuming that the people of the country are, for the most part, sane, and do not require State assistance in order to know that two and two make four, and that coffee berries do not grow among the roots of the potato plant, nor tea leaves on the willow.

Having premised these truisms, what is the shape an Adulteration Act should take? It should assume that the people know the meaning of the words they daily use; and that

when they do not know the meaning of a word, they should, and do as a rule, take the precaution of asking.

Now let us suppose that a purchaser complains that the vendor has palmed off upon him something different from that which he bargained for. He agreed to pay four shillings for a dozen bottles of cider. He pays the money and receives a dozen bottles of some decoction of which less than 20 per cent is apple juice. Let him have an action to recover his four shillings. If the vendor replies "What is cider?" let the Court have *carte blanche*, unfettered by any arbitrary rules, to say whether cider means fermented apple juice or something else. If there is any doubt in the matter, let the question go to a jury. Whatever the result, the next man who buys or sells a beverage by the name of cider will know what is meant. In case the verdict is for the plaintiff he should recover back the price paid and costs. But the vendor should not recover the goods delivered. He voluntarily gave up possession, and he cannot show that they were obtained by false pretence of any kind. He has tried to steal an advantage, and having failed, must pay the penalty.

Thus the fraudulent dealer is punished in exact proportion to the extent to which he tried to cheat his neighbour. And the victim of the fraud gets back his money and is compensated for the risk he ran and for the trouble he has been put to. And there is no danger of his being regarded in the light of an informer. He is the injured party. Lastly, it is for the public benefit that a strong inducement should be held out to those buyers who deal in large quantities to come down heavily on wholesale dealers. There would always be the danger of this, and although in many cases an understanding might be come to between large merchants and distributers, the fear of an occasional "traitor" among the retailers would create a healthy sense of insecurity among adulterators on a large scale.

The difficulty of getting at those retailers who do the adulteration themselves and sell in small quantities is not so great as might be expected. Once the sinews of war are provided for the battle, there would be little time lost in preparing for the campaign. Local combinations of consumers would soon spring up (for it would be somebody's interest to start them), and the expenses of a large number of small exposures would be more than covered by the prizes which would occasionally be won. At present it is nobody's interest to expose the fraudulent trader. Nothing is to be gained by it except a sense of duty alone, and alas! this is but a weak motor nowadays. Make it worth the while of some local chemist or solicitor to take the matter up, and a clean sweep of all these abominable frauds would be made from one end of the country to the other with amazing rapidity.

What *is* adulteration? We hear a great deal about it, and most people imagine they attach a distinct meaning to the term. Yet one never meets with a good or even tolerable definition of it. The purchaser asks for sugar; he receives something containing 90 per cent of sand; is that adulteration? "Certainly it is," replies the casual observer. But if it contains 95 per cent? "Then it is still more so." 99 per cent? "More than ever, of course." But if it contains 100 per cent of sand, what then? "Why, then it is *not* adulteration." So that "Champagne" without a drop of the juice of the grape in it is not an adulterated wine, but if the merchant is fool enough to put a glass of the

genuine article into his liquor, he becomes an adulterator. If the purchaser asks for Demerara sugar, and receives French beet - pure and simple - it is not a case of adulteration; but if there is an ounce of Demerara in it, the vendor can be prosecuted. Is that the state of affairs? And, if so, is it a desirable state of affairs?

Again, when does dilution constitute adulteration, if at all? Whisky, of which one half is water, is certainly not considered adulterated. When it contains three parts water, it is weak and ought not to be sold. At what point between these two does adulteration begin? But the greatest difficulty arises in the case of names of things which do not necessarily denote anything very definite or particular, *e.g.* cloth. It may be doubted whether cloth even excludes all but woven fabrics. Felts and shoddies sometimes pass as cloth, and it is doubtful whether most people would refuse to regard such things as species of cloth. In the narrowest sense, the term signifies a woollen fabric, in which sense, therefore, an admixture of cotton would constitute adulteration. On this interpretation, over 99 per cent of the clothes we wear are considerably adulterated.

At common law it is a crime in Scotland to pass off as genuine an article which is not so. And it is punishable as a fraud. But what is "genuine"? Clearly if the vendor undertakes to supply an article according to sample, and sends a different quality of article intentionally, such article is not genuine. But this covers so few cases of fraud that it has been found necessary to supplement the common law by statutes of various degrees of stringency, all of which are ridiculous and contemptibly ineffectual. These Acts descend to the most childish details, and are quite innocent of over-generalisation. For example, what can we think of the Food and Drugs Act, 1875, which prohibits the mixing, colouring, staining, or powdering any article of food so as to render it injurious to health? Surely, if a person knowingly sells a substance to another which injures his health, it does not matter whether the colouring, staining, or powdering has anything to do with it. "Powdering," forsooth! Was ever such nonsense promulgated in the name of the Collective Wisdom? There was once a Liliputian War between the public "analysts" and the Revenue officers as to whether water is an adulterant in beer, and, if so, when? Somebody says it doesn't matter, and that is about the truth. If a man gets small beer when he expects strong, it will not happen twice if he also has a grain of sense. "What strength is the beer, please?" Or, if that is too much to expect of the British consumer who is born to be taken in, let him change his custom to a house where the specific gravity is marked in plain letters. If he will not make the slightest effort to protect himself, the probability is that he is the sort of man who is all the better for drinking small beer, and that the race will not suffer much if he loses his money, or even "dies in October."

But whatever may be deemed necessary for putting a stop to practices against which the consumer has a poor chance of contending successfully, one thing is absolutely requisite. The purchaser must not be left single-handed to fight the unscrupulous trader. Efficient co-operation is not a thing that can be State-created. But it must be brought about somehow. How far the law relating to maintenance would impede the action of any combination of purchasers is a question for lawyers. The difficulty has been surmounted in the case of the Trade Protection Societies. But it is a question not for the lawyer, but for the legislator, how far this rule of law should be suspended or neutralised in this particular class of actions. There is no good reason whatever why a

victim of adulteration should not place the matter in the hands of his society, which should take all the trouble and responsibility off his hands, recover the money paid, and expose the adulterator, without any further onus on the purchaser than the tendering of the necessary evidence. It is not likely that a purchaser would sue a vendor for the price of a pennyworth of sweets, but a society existing for the purpose would as readily sue for a penny as for a fortune.

In the light of the above considerations I some time ago drafted an Adulteration Bill which was read a first time in the House of Lords in 1886. Omitting the usual padding in Acts of Parliament, the Bill consists of three clauses. By clause 3 every vendor is in future to be taken to warrant the commodity sold, unless he distinctly informed the purchaser that it was adulterated. And it is not to be the duty of the purchaser, as heretofore, to prov the negative; the onus of proving that he *did* inform the purchaser rests on the vendor. The clause regards a commodity as unadulterated when it is exactly what it professes to be. Thus if a vendor sells a customer a pound of "Jones's mixture," purporting to be a tobacco mixture, provided the mixture is just as it leaves the original manufacturer or mixer, it is not adulterated so far as the present vendor is concerned. The onus of proving that the mixture is all tobacco is thrown back on Jones as the original warranter. But even in such case it is necessary for the present vendor to show not only that he sold the stuff as "Jones's mixture," but that it was "expressly purchased as such." Probably the only satisfactory proof of this will be that the packet was so labelled at the time of sale and delivery. 15-carat gold must be described as 15-carat, or the vendor will take the risk; but if it is marked or sold as "Pryce's standard gold," it will be the purchaser's look-out to ascertain what such standard may be.

Hitherto it has been necessary for the purchaser to prove not only that the commodity is adulterated, but that the vendor knew it to be adulteratedem—a most absurd requirement But, by clause 5 of the Bill, the fact of adulteration is to be *prima facie* evidence of the vendor's knowledge. The only way in which he can establish his innocence will be by showing that he bought the commodity from some one else in the belief that it was unadulterated. The responsibility will then very properly rest upon the original dealer, who in his turn will be called upon to *prove* that he informed the middleman of the true nature of the article.

Clause 4 of the Bill provides for the penalty or consequence of selling adulterated goods. At first sight it does not look very severe, but on careful examination it will be seen that it will have the effect of rendering the process an extremely dangerous one. The adulterated goods are entirely forfeited. Thus the law will weigh with greatest force on the manufacturer and wholesale merchant; and these are the chief delinquents. Small retail dealers will run a proportionate risk, which pecuniarily will be small; but they will also incur a risk of another kind. No longer being able to throw the blame back on the wholesale dealer, they will be branded as fraudulent. To-day it is hardly worth while to bring home to a retailer the charge of having sold sixpennyworth of adulterated sweets, or tobacco, or tea, because he has only to say that the goods are just as they were delivered to him, and there the matter ends. He does not stand branded as a cheat. In future he will be between two stools. Customers will find it worth their while to expose him; and wholesale dealers will co-operate

with the public for the sake of their own reputations. For the merchant who dare not himself adulterate will take good care that his wares do not get a bad name for nothing; which they would do if goods supplied pure by him to the retailer, reached the customer in a deteriorated condition.

Another result of the proposed law, if it should pass, will be the encouragement afforded to customers to combine for the exposure of retail adulterators. At the present time there is no inducement to do this. The process of bringing the charge home is too difficult, too expensive, and in many cases too dangerous. To pillory a shopkeeper in the local newspapers, though in itself an excellent plan, is to court an action for libel,—which in the present state of the law it is no easy matter to defend. It would be otherwise if my Adulteration Bill became law.

This Bill is *not* State-socialistic. It is based on thorough-going individualistic principles. It contains no reference to inspectors, no arbitrary penalties, no common informers, no Government "analysts," no Government standard of quality; in short, it leaves everything to the common law, and to the common-sense of the parties concerned. If a customer prefers cheap and wholesome butterine to dear and dirty butter, let him have it. But then he must be made to know that he is not buying butter but ox-fat. There was no need for the law to compel dealers in ox-fat to label their ware by a repulsive and mendacious name, such as "margarine," which it is not, or "whale-blubber," which it is not. Similarly, if a customer prefers plenty of a light beer at a low price, to less of a strong beer at a high price, why should the State stand in his way? He is not likely to pay a high price for a low quality, when he can get the better quality next door; unless he is an idiot or cannot tell the difference, in which case, he is probably all the better for drinking the lighter beer. Again, there is no particular virtue in hops beyond their power of imparting a pleasant bitter to the ale. If customers like ale embittered with camomile or any other "bitters," what does it matter to the State?

It may be said that unwholesome ingredients are frequently used as cheap substitutes for those which are wholesome. Good; but this is quite a separate question. It is not a question of purchase and sale at all. What does it matter to one who has been half poisoned by arsenic, whether the green sweets containing the poison were sold to him, or given to him, or forced down his throat? He has been injured by another person, and he has a right to redress. It is no question of adulteration at all. Now the Adulteration Bill provides for this by keeping the two questions distinctly apart. According to clause 6, "Nothing in this Act shall be deemed to protect any person from being proceeded against by way of indictment in respect of the sale of any adulterated commodity ... or shall prevent the purchaser of any adulterated commodity, who by the use thereof sustains any injury to his health, whether temporary or permanent, from recovering from the vendor thereof damages for such injury, *in addition to* any moneys or commodity he may recover under this Act." Of course not. The offences are distinct and separate, and should be so treated. It is not necessary to prove adulteration at all in such cases. The substance sold to a child may be pure unadulterated sugar of lead; the offence remains the same.

If the Government would but exert themselves to pass some such single modest measure, its effect on the public mind might serve as a barrier to much proposed legislation of a socialistic character. The public have had little or no experience of sound and healthy legislation, and they naturally look to the Legislature, not only to make laws, but to "keep them going." Whereas one difference between good and bad laws is that the former, when once enacted, "keep going" of themselves without an army of officials and a State department. Here is the Bill:—

THE ADULTERATION BILL

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.This Act may be cited as the Adulteration Act, 18...
2."Person" includes a company, "Court of competent jurisdiction" shall be read and have effect as if the debt or demand in respect of which the expression is used were a simple contract debt, and not a debt or demand created by statute.
3.The vendor of every commodity shall be deemed to warrant the same to be unadulterated, unless he proves that he informed the person purchasing the same at the time of the delivery thereof to him that it was adulterated; or that the commodity was expressly purchased as the manufacture, composition, or mixture of some other person than the vendor thereof, and that the said commodity was at the time of the delivery thereof to the purchaser in the same condition as when it was received by the vendor from such other person.
4.If any person knowingly, and without giving the information by this Act required, sells to any other person any adulterated commodity, the purchaser thereof may recover from the vendor thereof in any court of competent jurisdiction the sum paid therefor, and also any commodity he shall have given therefor by way of barter or exchange, and the vendor shall not be entitled to claim a return of the adulterated commodity, nor the price thereof.
5.The proof that any commodity sold is an adulterated commodity shall be *Primâ facie* evidence that it was an adulterated commodity to the knowledge of the vendor at the time he sold the same; and if sale and delivery were not at the same time, then also at the time he delivered the same.
6.Nothing in this Act shall be deemed to protect any person from being proceeded against by way of indictment in respect of the sale of any adulterated commodity, or shall relieve any person in respect of any such sale from any penal consequence to which he would have been liable if this Act had not been passed, or shall prevent the purchaser of any adulterated commodity who by the use thereof sustains any injury to his health, whether temporary or permanent, from recovering from the vendor thereof damages for such injury, in addition to any moneys or commodity he may recover under the preceding provisions of this Act.

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CHAPTER V

Education And Instruction

To be in a position to pass judgment on the State methods of education at present employed, we must first know what education really is. If all discussions began with clear definitions of the subject in question, much wasted breath would be saved. And here as usual we are met on the threshold by an all-pervading misconception. Education is commonly regarded as synonymous with Instruction. This confusion of two very distinct ideas is probably at the root of much of the evil about to be exposed. Let me illustrate the difference by analogy. The difference between the art of education and that of instruction is precisely analogous to the difference between the art of a physician and that of a cook. The one is concerned primarily with the organism, the other with the food which is to afford nutriment to that organism. Both tend towards the same consummation, the maintenance of equilibrium between the organism and its environment; but whereas one deals chiefly with the organism itself, the other is concerned primarily with the surrounding material, and the analogy holds good throughout; for just as the cook may occupy himself in the preparation of the most dainty and luxurious dishes to pander to the morbid appetite, and be none the less an excellent cook; so may the instructor teach the most useless and despicable subjects and be none the less a clever and excellent instructor; whilst on the other hand the physician who should encourage the acquisition of a perverted appetite, and the educator who should foster a desire for aimless and unwholesome information, would alike be regarded as wicked and foolish. For example, the educator who should create in the mind of a pupil a desire to be skilled in the composition of Greek verse would be a most unwise educator, but the desire having once taken root, the instructor who should impart the requisite knowledge most rapidly and most completely would be the best instructor.

We may now attempt a preliminary definition of education. Education is the art of training the organism, physically, intellectually and morally, so as to enable it to conform to the conditions in which it is situated. Instruction is the art of methodically arranging and presenting facts to be known, so as to render their knowledge easy of acquisition. Education deals with the machine-the human mind. Instruction deals with the material to be operated upon by the machine. A child may, therefore, be well instructed and badly educated, or *vice versa*. Which is the more important of the two?

Two astronomers set to work to make observations with crude, imperfect telescopes. The first spends some years in improving his telescope, rendering it achromatic, more easily adjustable, and increasing its power: the second commences at once to observe the heavenly bodies. No doubt he will get a considerable start of his competitor, but will his superiority last? No, in a short time the better telescope will tell, and its possessor will shoot far ahead of the other, and will be able to make discoveries utterly out of the reach of the ill-developed telescope, even though it should be directed towards the same quarter of the heavens for a millennium.

So it is with that greatest of scientific instruments, the human mind. Two children commence life together: one is well instructed, well crammed with all kinds of knowledge, and admired by all its relatives as a prodigy; the other is educated to exercise its own faculties: facts and information are left to take care of themselves, and all the world is shocked at the poor child's ignorance of the stock subjects of schoolroom lore.

It has often been remarked, by some with surprise, that precocious children generally turn out failures: at fifteen or sixteen they begin to fall off, and finally slip back into the rank and file of ordinary youth. The ignorant child, on the other hand, to the amazement of all, after passing first for a dunce, and then for an eccentric, is sometimes discovered to be a genius. Little Francis Bacon did no good at school; at college he hated his studies, and left in consequence; in the chapel of that college his statue may now be seen alongside that of Isaac Newton. Henry Buckle is another example, and in the front ranks of literature and science are many who, up to the age of twenty and upwards, were set down by their neighbours as blockheads.

Not that the well - instructed, badly - educated youth invariably turns out a useless man. Led on by some association of ideas, he often becomes an ardent lover of some science of which he knows much; but beyond making enormous collections of specimens and detailed observations, he seldom advances that science a single step. The grand generalisations, the new theories, the glorious discoveries, are left to the man of genius, who makes use of the very facts so laboriously accumulated by others, to weave for himself a crown of glory.

Even a moderately complete methodical instruction is incompatible with the sound education of the young, for the simple reason that a good education implies such development of the faculties as to create a desire for knowledge. If you would strengthen a child's body, you are not continually stuffing food down its throat; you rather encourage it to take plenty of exhilarating exercise, so as to acquire an appetite keen enough to induce it to demand, and to enable it to digest, a fair amount of wholesome nutriment. To adopt the other course is to treat the children like the famous geese of Strasburg-to confine them in baskets, so as to prevent them from working off by exercise the imbibed force, and then to gorge them to suffocation.

And now having proclaimed in favour of education *versus* instruction, we must set about to inquire what studies and methods of study are the best as a means of education; the object of which is to bring the organism into harmony with Nature, including the highest development of Nature, Society. And how do we know when we are in harmony or equilibrium with Nature? What is the subjective interpretation of this relation? It is happiness. Happiness in some form or other is the end and aim of all voluntary actions - the universal motor. Whether it be the gratification of eating cheesecakes, or the gratification of the sympathetic faculty in making others happy, or the anticipation of happiness beyond the grave, it is all one, it is still happiness. And in order to act in conformity with Nature, so as to be in equilibrium therewith (*i.e.* happy), we must *know* the laws of Nature. We must avoid putting our hands in the fire, breathing infected air, swallowing arsenic, jumping off high bridges, and so on. And to know the laws of Nature thoroughly, exactly, quantitatively, this is Science.

Every department of knowledge properly studied is a branch of Science; and so the true education is a training for Science.

Observe, a child soon learns by experience to keep its hand out of the fire. Man develops according to nature, if left to nature. It is the artificial conditions abounding which call for an artificial instruction at all. Thus by the invention of clothing, children are born in a climate with which, by nature and inheritance, they are out of equilibrium; the care of others is necessary to prevent their exposure to cold and damp, which they must learn to regard as injurious, even when experience does not tell them so. And as the environment becomes more and more artificial and complex, so must the organism. Hence instruction bids fair to take longer and longer, to subtract more and more from the individual life of every one as time proceeds; unless its methods improve *Paripassu* with other developments. Human beings remain children longer than any other species of animal. We have undergraduates finishing their studies at an average age of twenty-three.

Before proceeding to criticise, as tenderly as may be, the studies we all waded through as small boys, it may be as well to note that when we speak of the faculty of observation, the faculties of reason, of abstraction, of memory, the sympathetic faculty, and so forth, we must not be understood to assume that the mind has any separate faculties at all. The mind is a complex whole, though its various modes and manifestations admit, like everything else, of convenient classification. Ideas are but sensations not yet settled down, as the ripples on the water continue after you have ceased to agitate it. Memory is but the arousing into reconsciousness of an idea which has been compounded and overpowered by others, as we again distinguish the voice of the *prima donna* when the chorus ceases. Reason itself is but the outstripping of sensations by ideas in a race among the cerebral rhythms. But let us not wander off into psychology.

And now for the subjects of instruction as we find them to-day. The ordinary school curriculum varies, as is well known, for some undiscoverable reason, according to sex. Boys and girls both learn to speak their own mother-tongue and to read and write the same; they learn some arithmetic, a good deal of grammar, and what are called history and geography. Then girls start off on one track and boys on another. Girls begin to struggle at two modern languages, French and German; boys at two dead languages, Latin and Greek. Sometimes the girls substitute Italian for German, but the boys have no choice; Sanskrit is never taken up instead of Greek. The girls set off to perform on a musical instrument—almost invariably the piano. With ear, without ear; with taste, without taste; willy-nilly, to the piano they must go; and after a few years they are labelled, “Qualified to interpret to us the deep emotions of a Beethoven.” The boys, on the other hand, pass by the green fields of aestheticism, where the girls gather wild flowers according to rigid rules, and plunge into the sea of abstractions; into Algebra and pure Geometry, into the Calculus of Functions, and the Calculus of Operations.

Let us take these studies one by one, and turn them inside out. Talking comes first, and to do the children justice, they learn the art quicker and better than any that follows. Even when they begin to learn another language, their experience affords

them little help; and (what is very singular) babies use verbs and nouns and adjectives without even knowing the meaning of such terms. Is it that mothers give private lessons to the babies in Syntax and Etymology? Else how could the poor little things ever get to talk at all? No one ever heard of a child learning Latin without beginning with grammar. However, this is a mystery! Then reading; this must not be confounded with knowledge in the sense of Science. It is only an invention for enabling us to listen to persons separated from us by space or time—by miles and by centuries; and thereby increasing our chance of learning the best that has been said on all subjects. Writing is the converse of this: it enables us to communicate our ideas to others separated from us by space and time, Reading and writing, then, are only useful instruments to enlarge our powers of observation, just as the telescope is a means of drawing nearer to us phenomena separated from us by intervals of space too wide for our unaided vision; as the microscope enables us to discern objects too small for the naked eye; and as the thermo-electric pile enables us to detect variations of temperature far too slight for our unaided sense, or even for the best thermometer.

The first subject of study which can truly be called knowledge is arithmetic; and even this is merely talking another language,—a conventional system of expression of identities in number. Thus 2 and 2 are 4 is not, properly speaking, a fact, it is merely a translation of expression, just as if we say that *inensa* is a table or *chapeau* a hat. No proposition concerning Nature is enunciated. The expressions 5, 4+1, 3 + 2 are merely convertible terms, and cannot be proved to be true except by mutual agreement, just as the expressions, cheval, pferd, horse, equus are various names for the same thing. This remark holds good throughout the whole field of mathematics. Consequently, the teaching of pure mathematics out of connection with concrete things is precisely as useful as teaching a complicated and powerful language without any reference to the objects or actions denoted by the words of which it is composed. It would be possible to teach a language after a fashion, without understanding a single word of it, and mathematics can after a fashion be so taught also; and it is so taught. The most abstract of sciences, then, is the first to be learnt.

Grammar comes next. Of this it may be observed that it is a mixture of two distinct highly-abstract sciences, logic and psychology; occupying the debateable ground between them. Whether a child should begin logic and psychology on its mother's knee may be doubted; but this may be confidently affirmed, that it is perfectly impossible to understand grammar before logic. We all remember the delightful muddle we got into about the difference between abstract and concrete names. Probably our instructor was as much bothered as any of us. “You see,” said he, “a concrete noun is the name of a thing you can take hold of, such as a table; an abstract noun is the name of a thing you can only think of, such as goodness, greenness.” “Which is a thought?” once asked a little boy. This was a stumper. After some hesitation came the answer that it is abstract, because you cannot take hold of it or measure it. “And the wind?” urged the urchin. “Oh, that is concrete, of course.” “But you cannot catch hold of the wind, or measure it?” “Well,” said the master, very much harassed, and wishing the inquirer far enough, “you could feel it if you confined it in a bag.” “*Perhaps*” was the reply, “perhaps you could feel a thought if you put it in a bag.” This was hailed as a lucky bit of impertinence, and concluded the discussion. One would like to ask some gerund - grinder whether heat is concrete or abstract;

mind, language, number, etc. How many grown-up persons comprehend the true gist of the wars between the Nominalists, the Realists, and the Conceptualists? And yet these are grammar wars.

Certainly a few unintelligible rules are got off by rote, and forgotten soon after; but that is all we can say of children's grammar; as of their arithmetic, which certainly does enable them to shuffle through an addition sum a little earlier, and with far less understanding, than a child left to pick up the requisite skill by experience. The rule - guided mathematician may be likened to a person in society whose actions are determined by reference to a hand - book of etiquette. Both are equally conventional and awkward; and, under new conditions, completely at sea.

Now for what goes by the name of History. It consists of a mixture of dull and lively stories founded on fact, and based on events which occurred in a couple of peninsulas in the Mediterranean some two thousand years ago, and more recently in this country. We would deal gently with this subject for a reason usually overlooked; for although it is difficult to discern what good a child can derive from the knowledge that William II. came to the throne in 1087 A.D., or that Codrus was the last of the Athenian kings (if he was, for really one does forget even these things), or that a great many other dry and unimportant events occurred at certain dates; yet it must be confessed that the really adventurous stories in Greek, Roman, and English chronicles do make us feel acquainted with amusing and pleasing characters, just as novels do-no more; and consequently when, if ever, we begin actually to study *real* history, we meet our old friends at every turn, and the pleasure is enhanced by the association of ideas.

Of so-called Geography, little can be said that is kind. It certainly familiarises us with the shape of some countries which assume queer, vague resemblances in the eyes of children. Prussia and Turkey-in-Asia look like two animals walking, Austria like a big dog lying down, Italy like a leg, and some people say that England and Ireland resemble a little girl taking care of a baby-a very noisy baby. It also leaves the names of cities and rivers ringing in our uninterested ears. The colours used in maps have also a good effect on a child's mind, and to be allowed to colour maps is regarded as a pleasant exercise, if only those tiresome mountains might be left out; and surely they might. But to regard the other and sad side of the subject. Does it not seem absurd to force a child to learn the conformation of the watershed of the Danube before it knows where the stream running through its own garden either begins or ends? One knows by heart the name of every public building in Athens, and half the roads about Rome, before one has ever heard of the chief buildings or streets in London; just as we read Virgil before Shakespeare.

As for French, there is no need to theorise; what is the experience of all? After ten years of schoolroom study, of irregular verbs, of past participles ending in *e*, of genders, of idioms, and what not, did we, did any of us, know the language even tolerably? Did not six months in Paris do more for us than all the previous routine? And Latin! Do any of us know it at all? Can we speak it? Could we read it with sufficient ease to enjoy a three-volume Latin novel? We can write laboured prose and hideous verse, it is true; but is that knowing the language?

Next comes music? O, that piano in the schoolroom, those five-finger exercises; then the scales and arpeggios; then some stififer exercises, and an air with variations on the same model. The air is never *Pop goes the weasel*! or *Yankee Doodle*, or anything children really understand, but usually a rather involved but easy selection from an Italian opera, diluted to the tasteless point with variations *à la* Richards. And from this point such progress is made that by the time they leave school our girls have ripened into the full-blown pianist—rushing, stumbling, thumping, and skipping over the keys of the instrument in such sort as to make us yearn for a barrel-organ, which cannot make mistakes if it tries. Is there not too much music taught in the upper classes of society? Music is the vehicle of the highest emotions, inexpressible by ordinary language, even in poetry. If so, is it possible or healthy for young ladies to be in an ecstasy for a third part of every day?

Most of us remember, when we were little, very much wanting to learn to draw and paint, and we have an equally vivid recollection of wanting to give it up again not long afterwards. No wonder. First came a tedious practising of straight lines—thin lines and thick lines: lining in: and that horrid thing we had to copy over and over again. Everybody knows it, or maybe something like it. It resembles a pineapple top perfectly symmetrical. If a Greek girl ever presented Euclid or Archimedes with a flower, he would have dreamt of something like this copy. It was a sort of half flower, half geometrical diagram. And then came perspective by rule, and long lines and rulers, and a circle of vision, and 60 degrees, and compasses, and all the rest of it; and then mechanical drawing to scale. The working of the machine is never explained, so that we never know what we are drawing. And so we get to hate it. As for Painting, at school it is seldom taught at all.

And this is the end of our list of subjects; in all of them we begin with the abstract and the general. Yet somehow or other we all know something more than is comprised in this programme. Nature *will* develop the mind naturally. Artificial instruction is required only to supplement Nature, not to stand in Nature's stead.

Before inquiring what education ought to be, let us see what Nature has done for us, and whether her mode is similar to that adopted by school tradition. Though we are now discussing intellectual education, not physical or moral, we are quite justified in reasoning from one to the other.

There can be no doubt that the skilful anatomist could devise a system of gymnastic exercises which would bring into play all the muscles in the body in proper proportion. Let one of the children be trained in these exercises day by day, the other allowed to be free, to play cricket, to run races, boat, swim, ride, according to his own unconscious impulse. Which of the two will turn out the healthier and stronger? Is it not the one whose actions and energies are accompanied with joy and high spirits and are voluntarily endured? Is not one day at football or grouse-shooting, though not calling for particularly varied or complex muscular movements, worth a whole week with the clubs, the dumb-bells and the parallel bars?

There is no drudgery in learning to talk; the child does it with pleasure, and even at an early age with manifest pride and excitement. It learns naturally. Should not we adopt

the same method in teaching French and Latin? The baby does not begin with grammar; it learns to call green things green before it knows the meaning of abstractions, and before it knows the theory of refraction or reflection, or anything at all about optics. Somebody says in some work on education that to preface a language with grammar is as wise as to preface walking with an oral disquisition on the nature of the muscles and nerves of the legs. There is much truth in this.

We all learnt a little botany, a little zoology, mineralogy, and a very little astronomy of our own accord; but when we reached a certain stage, we suddenly ceased to increase our knowledge, and most of us now remain where we left off. We learnt to distinguish roses from dahlias and peonies and hollyhocks long after we distinguished these from cabbages and laurels, and all together from cows and horses; we classed robins and sparrows and geese and crows together, and distinguished them from pigs and dogs and mice. We knew the moon from the sun and stars, and sandstone from clay and limestone. How is it we never got much further, never got to distinguish insects from spiders, chalk from dolomite, mosses from lichens, and perhaps not even the planets from the fixed stars? Simply and solely because our self-instructing instincts were stifled, nipped in the bud, and we were thrust into tasks which we had no sympathy with and could not understand; and consequently, ended by acquiring neither one kind of knowledge nor the other. From acquiring greater fluency in conversation, from learning to employ more words intelligently, our attention was diverted to analysing or feigning to analyse what little language we did possess; and now, out of some 45,000 words in our own tongue, we make shift, most of us, with some 600 or thereabouts. Put down every word that is uttered at an ordinary dinner party, and you shall not find more than three hundred words employed.

From estimating by intuitive methods what sort of a strawberry crop we should have in our own little gardens, from the distribution of bloom (a calculation involving complex arithmetical calculations and much observation), we are drawn away to reckon up abstract figures which have no concrete embodiments, and which do not in the least interest us. Before as yet we have well begun to distinguish the wandering from the fixed stars, or to observe on which side of our own garden the sun rises, we are whirled away into disquisitions on the earth's orbit, the North Pole, the plane of the ecliptic, the lines of latitude, etc. While as yet we were digging in our thickets with excitement, wondering what was under the ground; while we compared every coloured earth with what we already knew, and every leaf of novelty with those with which we were acquainted, we were dragged into the schoolroom to learn off by heart answers to such questions as, What is a dicotyledon? Can you draw a petaloid perianth?

Another important truth about those Sciences at which we begin while yet babies to nibble is that they all belong to the class known as concrete- none to the abstract. Nature begins by developing our perceptive faculties, and then little by little, and not suddenly, leads up to abstract ideas and wider generalisations; and we should follow her example. Again, it is noticeable that Nature does not thrust herself upon the unwilling mind in the order of theoretic classifications. A child interrogates Nature, Nature does not preach to the child. Should not we do the same?

This brings us to the three modes of imparting instruction, (i) You may inform another in any order you please. This is the didactic method. (2) You may reply to another in any order he may desire. This is the natural method. (3) You may question another. This is the dialectic method; of which there are two species. Your questions may be of the nature of an examination; each of them independent and final, and meant to test the respondent's knowledge. Or they may be arranged in the form of an argument, so constructed as to lead him step by step into some absurd or desirable position. This was the mode employed by Socrates in opposition to that used by the Sophists. All these modes are good in their proper place, but the order of their suitability to the human mind is, first, that of Nature -answering questions; second, the dialectic; and third, the didactic, which includes lectures and books. In practice the last method is taken first, and the first is never employed at all.

So much for the mode; now for the matter. What subjects is it necessary for the child to study? When should it begin each? What extra subjects should be reserved for what is known as a liberal education in contradistinction from an elementary one?

The child should begin its artificial education after learning to talk a little, with botany, geography, and geology; at this stage it should begin *painting*, and some musical instrument (not to mention subjects of physical education, riding, swimming, and boxing). From and through painting an easy road is found to chemistry, the most important of all the sciences, both in its reaction on the student's mind, and also in itself; for the next great discovery will be made in this quarter.

During all this time, and parallel with these studies, stories of adventure and attractiveness should be told, when asked for, as a rule founded on historical and biographical incidents; and the drama should be allowed free play and stimulated. It is inherent in man to act. Children play at mammas and nurses with dolls; they play at horses, and they invent drawing-room conversations in feigned voices. All this is excellent, and should be encouraged in every way by attending and applauding the best specimens of acting, by turning the nursery or playroom upside down for a stage effect, and by providing unlimited rags for royalty. A few years later arithmetic and geometry may be brought in, and lectures with demonstrations on physiology may be attended, always short and well illustrated from Nature and diagrams. Optics, thermics, electrics, and pure mechanics should all be taught in conjunction with their practical applications. Then philology may commence, leading to logic, grammar, and psychology; but these, together with plutology, ethics and sociology, will be spontaneously seized upon by the mind trained so far after Nature's mode; and it may be doubted very much whether assistance would be required from others (so far as creating a desire for knowledge is concerned), after the first crossing over to the abstract sciences-a transition which requires care. Industrial arts and languages may be taught at any time, according to the means or profession of the parents. Nor will it take long to draw what line is to be drawn between a liberal and an ordinary education, for the plain and simple reason that no such line can or should be drawn. The only educational difference discernible between the classes should be that which results from superior opportunities of meeting persons of culture. Taste is infectious.

No doubt some will deride the imposing curriculum here sketched out for their children; but there is no reason to diminish it; and for purposes of education a little knowledge of all subjects is better than a great deal of one. The combination of various kinds of knowledge tends to form a philosophic mind. As for morality, it cannot be taught by precept or command. It is learnt only by a study of mankind, by experience and generalisation; it is a knowledge which grows with ourselves. Of religion little need be said. True religion is a yearning for the unknowable, an acknowledgment with humility of the impossibility of ever solving the wonderful riddle of existence, upon which theology and metaphysics have alike expended their mighty forces and failed utterly. The truly religious mind submits with resignation and emotion to the limits imposed by Nature on the intelligence of man, while the metaphysician still continues restlessly to reason round and round, as the tiger in his cage, by incessant repetition, vainly seeks an exit. Surely this truth each must rediscover for himself in order firmly to feel convinced of it.

The education of the young is clearly one of the most difficult, delicate, and responsible tasks which a human being can undertake. It requires a combination of qualities such as no other art calls for. It may almost be said that each individual child requires a special training. Even the children of one family cannot be all safely cast in the same mould.

> No compound of this earthly ball,
> Is like another all in all.

The one defect (and perhaps the only serious defect) in our splendid English Public School system is due to the immense difficulty experienced by conscientious masters in studying and comprehending the character of each individual boy under their charge.

What then is the cure for this evil? Ask the socialist, ask the neo-radical or semi-socialist. He will tell you, “State Education.” If it is difficult to fit the boot to the foot, the simple remedy is to squeeze the foot to the boot. Let the youth of the nation be divided into five or six classes; and let every child be squeezed through one or other of the five or six mills provided for them, in the same way as Tommy Atkins adapts himself to the regulation army-boot. What could be simpler?

Perhaps it is unnecessary to offer any comment on this. Thoughtful persons need none: and burnt-offerings to a wooden idol are not less effective than rational arguments to the vainglorious and self-sufficient ignoramus who is ever ready to teach the gods how to improve the Solar System. Although State Education appears at present to be well intrenched and stronger for defensive purposes than most of the other socialistic positions, yet there is one point on which an unexpected attack is likely to be made with success. It is hardly to the Nonconformist conscience that individualists would look for help in this matter: but two amusing incidents, one in England and one in France, seem to point that way. In both cases Religion was for once on the side of liberty. It is clearly the duty of a private teacher to dissipate untruth as well as to inculcate truth. Hence, if the State is to take the place of the private teacher, it would certainly seem to be the duty of the State, and of the official

to whom the people delegate the functions of public instructor, to do the same. So thought the French Government under M. Ferry. But no sooner was this policy adopted than the cry of religious persecution was raised from Dunkirk to Marseilles. Huguenots may be hunted and persecuted for generations, and freethinkers burnt at the stake; but touch these religious orders; venture to send an inspector into the convents, and straightway the cry is raised, "Down with Democratic despotism!" Now, sauce for the goose is sauce for the gander. If you will have State interference in such matters, you must leave the State to judge as to what is truth. That is to say, the majority must be permitted to prescribe, through officials, what the minority shall be taught in childhood, and, in short, what they shall think when grown up.

Then again, as luck will have it, the British Natural History Museum has fallen into the hands of Darwinians. The index department has been beautifully and admirably arranged under the most capable management. Little children run in and out, and without the knowledge or desire of their parents or guardians, grow up Evolutionists. Nothing could be better for the rising generation. One feels almost disposed to forgive the State for exceeding its functions and competing with the private schoolmaster, in consideration of the truly splendid manner in which its officials are acquitting themselves in this department. At the same time it must be admitted that a member of the teleological school would be justified in saying, "What is the meaning of this? Am I to be taxed for the support of a doctrine in which I do not believe?" Of course the British Public has not the faintest notion that its money is being spent in promoting the "pernicious doctrine of Natural Selection." Adam's famous exercise in nomenclature dwindles away into an ordinary feat of arbitrary specification:—Cat, tabby-cat, Manx-cat, wild-cat, pussy-cat, and *intermediate varieties* according to taste and convenience. When the British Empire wakes up to the enormity of what is being done at its expense, the consequences will be frightful. Let us do what we can to fix its mind on the other pocket, from which money is flowing more freely, and in quite another channel. It is said that a certain religious society consoled itself for sending out a distinguished man of science on an exploring expedition, by the reflection that at least a dozen of its own agents would counteract the evil tendencies of his teachings.

We individualists must be allowed to have our chuckle at the State socialists. It is not often that we have the laugh on our side. We are more frequently joint-sufferers with our meddling friends. Our partners speculate, and we meet the creditors. But it is almost comical to see socialists taxing themselves for the teaching of individualism. This is really what it amounts to, when examined.

The fact remains, however, that the State should not be permitted to teach the Darwinian theory of the origin of species, at the expense of those who accept a special-creation hypothesis. It is not fair; and honest evolutionists have faith enough in the final triumph of truth, not to require or desire even the unconscious assistance of their adversaries. Let it be distinctly understood that evolutionists repudiate this petty fraud upon the simple taxpayer, but at the same time refuse to pay for the propagation of untrue theories.

On the whole, the reactionary forces of ignorance are likely to be found more and more on the side of liberty, as time proceeds and nonsense becomes the heritage of the few.

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CHAPTER VI

Marriage

As I shall have to make sundry admissions in the course of this inquiry which to the orthodox will appear damaging and dangerous, I will say here at once that on the main issue I am in line with them; that is to say, I believe that the highest and best system of sexual relationship is the monogamic.

I am aware that this confession of faith is worth just about the paper it is written on (like any other confession of faith) without the reasons on which it is based. I place it thus in the forefront, lest the admissions aforesaid should scare away some of my readers at the outset, and so deprive them of the comfort of finding that *after all* there is much to be said for the principles of morality which so many of them profess, and so few practise.

Ever and anon, when the skeleton in the cupboard of some unhappy family is exposed to the general view, or the linen of some prominent household is washed in public, our present marriage system is drawn into question and criticised with passionate acrimony and bias. Several cases of the kind, which need not be more particularly referred to, have once again directed the attention of the community to the question. And it has been discussed on both sides of the Atlantic in more outspoken terms than would have been tolerated in former times. Unfortunately, the arguments both for and against the present system have been overloaded and weakened by disputations concerning the meaning of certain passages in ancient writings, and other irrelevant inquiries of a purely historic interest. Moreover, the two distinct issues involved have been invariably confounded, and it has been freely assumed on both sides that whatever marriage system is in itself desirable should be maintained by the forcible intervention of the State. I propose to inquire whether the State should interfere in this matter at all, and if so, how far.

There is a marked, and perhaps a very proper, desire on the part of individualists to shirk this question; and I confess to sharing it. But I cannot agree with those who pretend that it can be got rid of by pitching it into the contract basket. You cannot escape, as some recent writers seem to suppose, by calling upon the State to enforce the fulfilment of contract. Sexual questions are cropping up every day which cannot by any straining of law or of logic be brought under the head of contract.

Certain extreme advocates of a *laissez-faire* policy have put forward the doctrine that the enforcement of contract will safeguard all that is required in the existing system of sexual relations. But at this point, a split takes place in the let-be camp. “As regards marriage, then,” says Mr. Auberon Herbert, “we cannot rightly do anything, not even lift a straw, to restrain divorce or to perpetuate marriage between two persons. If you believe in liberty, you will believe that to pick marriage out for any special protection is not to uphold it or to honour it, but to enfeeble it and drag it in the mud.” Mr. M, D.

O'Brien, on the other hand, holds that the present marriage system ought to be jealously preserved by the State, and in support of this contention he devotes two long articles in Free Life to a vindication of monogamy, whereby the real issue is completely evaded.

Let us examine Mr. Herbert's position. Can the existing system, or any other system of marriage, be based on the enforcement of contract? Perhaps it may be provisionally assumed that the fulfilment of contract should be enforced; for even the anarchist admits that upon the keeping of promises modern society rests; and whether the community sanction certain kinds of promise, or leave the sanction to some form of voluntary association, matters little to the present argument. A contract is merely a promise guaranteed, or at least sanctioned in some way by the community. It is idle to talk of contracts not recognised by the State. Non-sanctioned promises, whether one-sided or mutual, are not contracts at all-the essence of a contract being the State sanction. When, therefore, we are told that the State is bound in justice to enforce the marriage contract, we are confronted with the prior question. Is such an agreement as marriage implies, one which the State ought to be party to? An agreement in restraint of trade, a bet, a bargain to sell oneself into slavery, a promise to pay a prostitute a sum of money for an immoral consideration-all such promises and many more fail to obtain State recognition, and cannot properly be called contracts at all. We are thus brought round to the fundamental question, which is, not whether the State should enforce the marriage contract, but, Ought there to be a marriage contract? Ought the State to be party to any agreement concerning sexual arrangements? And, if so, to what agreement?

If the State is to enforce the fulfilment of the marriage contract for life, why not also a one-day marriage contract?

I do not know whether Mr. Herbert would call upon the State (or whatever organisation may exist for the enforcement of promise fulfilment) to compel the payment of a racing bet, or of a surgeon's fee for performing an improper operation. But if not, he is hardly justified in saying, as he does, “We can enforce any payment agreed upon in case of divorce, but we cannot rightly do anything to restrain divorce or to perpetuate marriage between two persons.” Surely we have here a begging of the whole question of permanent marriage, instead of proof of its claim to exclusive State recognition. Again, Mr. O'Brien says, “All that the law can do is to make those who break the contract bear the losses resulting from such breaking.” What contract? The sole question at issue is whether such promise should be a contract. We cannot get to the bottom of this matter until we have clearly defined both contract and marriage; and the above utterances seem to involve hazy definitions of both conceptions.

Let us restate the problem. We all agree that certain kinds of promises ought to be sanctioned. We all agree that, at present, that function appertains to the State. Promises so sanctioned we call contracts. What kinds of promises ought the State to raise to the level of contracts? And more particularly, is there any promise relating to sexual connection which ought to be raised to the level of a contract—that is to say, State-sanctioned? If so, what is it? And why should not other promises relating to the

same matter receive similar treatment? These are the questions with which we have to deal.

One word *en passant* as to the mode in which Mr. Herbert would enforce a permanent marriage agreement. When we say that it is the duty of the State to enforce the fulfilment of all contracts, because contracts are those promises which, when expressed in the required form, the State has undertaken to back, the statement needs qualifying. For it is obvious that if a man has promised to jump over the moon, the State is powerless to compel him to do so. There are other courses open. It can punish him for non-fulfilment; or it can compel him to pay the promisee an equivalent in money. And this equivalent may be one of two things: it may take the form of damages previously agreed upon by the parties, or it may take the form of fair compensation for the promisee's disappointed expectation. Lawyers have long ago found out what Mr. Herbert overlooks—namely, that to enforce the payment of stipulated damages is practically the same thing as to enforce specific performance. To take his own illustration—a man pledges himself to work seven years for another: "I am not willing," Mr. Herbert says, "to enforce that contract and make him do such work; but if he pledge himself to pay a certain sum of money should he fail in doing such work, I am willing to enforce that penalty." It is clear that the stipulated damages have only to be fixed high enough-say at a million pounds-and the enforcement of the penalty is tantamount to the performance of the work. The courts, therefore, in such cases, will not enforce cither specific performance or the payment of the forfeit agreed on, but only damages *quantum valeat*. In other words, the court will assess the damage after the event, and the agreement come to by the parties before the event will be invalidated. This being the law and also common-sense, let us see what bearing it has on the marriage question.

In the first place we must find some basis upon which to assess damages in case of the breach of agreements of this nature. Mr. O'Brien quotes with approval the following passage from another writer: - When a prepossessing woman marries young on the terms of a life-partnership, and is put away at the age of fifty, and the partnership dissolved against her will, her capital, so to speak, having in the meantime been exhausted for the good of the firm, it seems but just that, as her youth and beauty cannot be returned to her, some compensation should be made for the breach of contract. It may seem so; but "things are not what they seem." On what basis is the compensation to be based? Assuming that other things are equal, that both contributed an equal sum to the common treasury, that both put their youth and beauty into the concern, and that these also were equal, that the partners drew equal shares of profit in the shape of happiness, and in such case I confess I fail to see any ground for a claim to compensation. How the State is to value the faded beauty of an elderly lady I do not know. Reversing the position, if it is the man who is put away at the age of fifty, is he to have a claim for strength "exhausted for the good of the firm"? Besides, so far as I can learn, Mr. O'Brien allows this claim only in the case of an agreement for life. He would not recognise an agreement to marry for a term of years—say for ninety-nine years. I really feel compelled to ask Mr. Herbert and Mr. O'Brien a few simple but not very pleasant questions. Would they enforce a prostitute's claim to a sum agreed upon? Would they enforce a properly-drawn agreement between a man and a woman to live together for a couple of months at the seaside, the man to pay all the expenses?

Would they put the State's endorsement on a marriage agreement for one year, provision being made for the child, if any? Would they allow a promise to marry, if sufficiently established, to be a ground of action, as it now is? And would they enforce performance of such a promise in the case of a married man? That is to say, would they not only tolerate bigamy, but also enforce it, in case the second woman could prove the promise? Would they repeal all law punishing seduction, by making proof of consent a sufficient justification-and at all ages? Unless these and a hundred similar questions can be answered with a plain Yes or No, it seems to me that the position taken up by these writers will have to be abandoned. If any one is bold enough to declare himself in favour of enforcing all agreements of the kind, where the evidence is sufficient, he will have a difficulty in drawing a line between acts which even the most advanced thinkers would distinguish as moral and immoral.

There is, I submit, another weak point in the position taken up in *Free Life*; not only does contract cover a great deal too much ground, but it also covers a great deal too little. Broken promises are not the only weapons wherewith to hurt people. We shall never solve the marriage problem by regarding it as a department of the law of contract. Even the State dimly perceives this. The absurd and illogical action for breach of promise to marry (breach of promise to promise) is really nothing more than a tortuous way of compensating a woman for injury to her feelings; just as the barbarous claim for loss of service in seduction cases is merely a straining of the law to give a parent compensation, not for loss of service, but for injured feelings. Law apart, people who injure others deserve to be punished, and are punished, by individuals. There seems to be a sliding-scale of seventy, and different persons inflict different penalties. But on certain matters there appears to be a pretty general consensus. A married man who flirts unduly with a young girl, without stating his position, deserves to be reproved; one who gives her highly-seasoned literature to read deserves to be cut or shunned; one who persuades her to accompany him without the knowledge of her parents, to a low place of entertainment, deserves to be horsewhipped; one who commits a rape deserves to be shot; and so forth. A heartless woman-flirt perhaps, deserves also to be punished as the Roman law permitted the forcible violation of a prostitute. It would be impossible to bring some of these cases under the law of contract, and for all of them it would be a useless task.

What shall we do, then? Shall we follow Mr. O'Brien, who ostentatiously flings away his individualist shield, and appeals for aid to socialism? Shall we follow Mr. Auberon Herbert, who would enforce the fulfilment of all promises relating to sexual matters, or, what comes to the same thing, the payment of the stipulated damages? Or shall we follow those writers who affirm that the sexual arrangements of two persons in no way concern outsiders, and decline to recognise any such promises as binding contracts? It is hardly necessary to observe that at present we are in the clutches of Mr. O'Brien and those who think with him. The State arbitrarily recognises some engagements of the kind, without assigning any reasons, and declines to recognise others which, to most minds, seem to be entitled to equal consideration. It sanctions what may be coarsely termed a lease for life, but will not sanction a lease for a term of years. And it will not permit the parties themselves to dissolve partnership unless they comply with certain arbitrary and, it must be added, very revolting conditions. In the eyes of unprejudiced persons, unaccustomed to existing social arrangements, a

marriage system would hardly be regarded as immaculate which requires life-long partnerships to be entered into without experience, and, as it were, in the dark; which, in case of disappointment, enjoins on the parties what Godwin denounced as a life of unchastity-the procreation of children in the absence of love; which winks at the out-and-out sale of a girl's person into life-bondage for hard cash; which unequalises the male and female children's inheritance on the ground that women are a marketable commodity, and may expect to be "kept" by their husbands; which enforces the barbaric restitution of conjugal rights; which sanctions the rape of a married woman; which refuses a woman divorce on the ground of her husband's adultery; which offers the youth of the country the choice between an irrevocable bond and prostitution; which calls into being a standing army of public women; and which, in consequence, hands down from generation to generation distempers which would die out in a decade under a system of orderly freedom.

"True," replies the defender of the present artificial system, "but what are we to put in its place? Our marriage laws and customs may not be perfect-nothing is perfect under the sun-but surely they are better than the free love or promiscuity which their abolition would make room for?" Here, again, we have a begging of the whole question. Would the removal of restraints be followed by a *regime* of promiscuity, or anything like it? Not at all. To affirm this is to despair of the race; it is to deny the very tendency towards monogamy which is so marked a feature in the history of civilisation. It is to affirm that the law is warring against Nature; that in the absence of external coercion, the observed tendency towards monogamy would be reversed. This feeble argument on behalf of despotism has snapped short off on every occasion on which it has been put to the test. It is on all-fours with the defence of the usury laws, with the defence of State-enforced religion, with the defence of the old sumptuary laws, and with hundreds of other State measures of past and present times, forbidding the people to rush on to their own destruction. People do not rush on to their own destruction, even when not dragooned by superior persons. On the whole, under the beneficent rule of natural selection, they make towards salvation. This is, doubtless, surprising to those who hold that we are all born in sin, and steadily treading the downward path; but it is, nevertheless, an observed fact. And upon those who urge that it would be otherwise in this matter of sexual relations the burden of proof must rest.

Let us endeavour to forecast what would happen in the absence of any marriage law whatever among people in an advanced state of civilisation. Their habits, inclinations, and inherited moral instincts would remain unaffected. They would not suddenly become transformed into a herd of swine. Love not being a thing to be ashamed of or secretly indulged, a well-disposed girl would under a free system, just as she now does, confide in her parents. The mother, father, or guardian would, just as is now done, make the usual inquiries, and, if satisfied, consent to the betrothal—call it marriage or by any other name. The absurd agreement to agree, promise to promise, now called an engagement, would probably disappear, and with it the even more anomalous action for breach of promise. The agreement would take the form of a public notification; that is to say, it would be registered. And provision would be made therein for possible issue, in the form of a settlement by the husband on the child, if any, contingent on the wife's fidelity till its birth. This would practically

amount to a one-year marriage. In the great majority of cases the contract would, of course, be renewed. To deny this is again to deny the truth of the monogamic tendency, which is a libel on civilised humanity. And it would soon be seen that, in order to save time and trouble in marrying again and again, the original contract should hold good until dissolved by the wish of either party, in the same formal and public manner as that in which it came into existence, namely, registration. The effect of dissolution would not be to relieve either party immediately. The husband's liability for the children of the marriage would continue for the space, say, of one year, contingent as before on the wife's fidelity. And the wife would be unable to marry again during that period without forfeiting the settlement on the child's behalf. And what would be the effect upon third persons? Adultery would become so rare and so contemptible (being wholly uncalled for) that the adulterer would be socially ostracised. It could be prompted only by the meanest and most sordid motives, or else result from an uncontrollable passion disgraceful alike to both parties. At the same time the law would take no notice of the act, except in so far as it affected the evidence of paternity. The settlement made by the husband would be cancelled, and the responsibility for the maintenance of the child would fall back on the mother; just as it now does when no father can be indicated. In short, the law would pay no heed to claims based on injury to the feelings. But cases of violation of the contract would be so rare as hardly to require separate consideration. In that minority of cases in which the union was dissolved by the wish of one of the parties, it would be done in the proper and lawful manner. And the obligation would continue for a period of one year after registration of divorce, or such shorter period as fulfilled the terms of the contract. For instance, if a child should be born the day after registration of divorce, the settlement would be good, and both parties would be at once free to marry again. A woman in the position described in the hypothetical case cited by Mr. O'Brien, could have no claim, either legal or moral, to compensation. After years of marriage, during which her youth and beauty “have been exhausted for the good of the firm,” she is deserted by her husband. Now, it must be admitted, that either the union (so long has it lasted) was a love-match, or it was not. If it was, then the bill is paid. If, on the other hand, it was not, then it must be classed with what are now called immoral contracts. Unchastity, as one of our leading writers has said, is union without love. Morally, therefore, it is entitled to no compensation. I am not saying dogmatically that the State should refuse, as it now does, to recognise immoral bargains. By some, it may be argued that if a woman chooses to let her body out for hire, by the day or for life, she ought to be entitled to recover in a court of law; just as she could if she let out her horse or her sewing-machine. All I say is that the public conscience is at present opposed to the sanctioning of such agreements, except in the case of a lease for Jife. And it would still be opposed to it in the absence of the existing legal system.

It is unnecessary to go any deeper into group motives. They are quite independent of the legal system in vogue. We may take it for granted that the public conscience will not permit of infanticide, or of certain surgical operations; and we may attribute the fact to the increasing sense of the sanctity of human life, or to any other cause. Anarchy or Archy, the community will in all probability hold the mother responsible for the support of her child in the absence of any evidence of paternity, just as it does now. And what is more, it will hold her responsible in the absence of any express

admission of paternity by the putative father, and a definite settlement by him on the child of the union.

This, then, is the proper limit of State action in the matter. It is not necessary to go with those who cry, “Make a clean sweep of the whole affair; the sexual union of two persons in nowise concerns others.” For several considerations point the other way. In the first place, in a moral age, love is not a thing to be ashamed of; indeed, successful love is universally regarded as a subject of legitimate pride. Secondly, it saves heart-burnings to know beforehand that a particular woman is appropriated, so to speak, and not properly open to attentions. Thirdly, public notification explains situations which might otherwise appear compromising. Fourthly, and chiefly, it makes the community a witness as to paternity, as the ceremony of adoption did in some places in the days before marriage. A man and a woman usually unite for one or other or both of two purposes, namely, the pleasures of love and the procreation of children. It is certain that as to the second of these purposes, the community is interested. The increase of population is a subject of general concern, even though the loves of citizens may be a matter of complete indifference. Hence the community will continue to sanction contracts providing for the support of children even when it has ceased to sanction agreements in which the attractions of one party are thrown into the scale against the wealth of the other. “But,” says Mr. O'Brien, “your free system makes no provision for the woman.” True, and why should it? The results of the union are equally beneficial to both—on the average. “Not at all,” he rejoins, “the woman undergoes all the pains of child-bearing for the joint good; towards this the man contributes nothing.” Here I join issue. In all healthy natural processes of life there is a net gain of happiness. On the average, the pleasures outweigh the pains. On the average, life is worth living—a net gain. On the average, the pleasures of love are an equal gain to both. And the pleasures of maternity outweigh the pains of child-bearing. I speak of those parental joys which the man cannot share or even conceive. “A woman when she is in travail hath sorrow, because her hour is come; but as soon as she is delivered of the child, she remembereth no more the anguish, for joy that a man is born into the world.” And the joy increases and outweighs the anguish a thousandfold. When, therefore, it is contended that the joys of marriage are not equal for the two sexes, it is because the pains of labour are set off against the pleasures of love, and the ecstasy of maternity overlooked altogether. Mothers do not make use of this argument. Only those women who know nothing of the blessings of maternity speak of the pains of child-bearing in exaggerated language as an unmitigated evil cruelly handicapping one sex. Medical men are all agreed that as a rule women of mature age are unhealthy unless they have become mothers; and the best authorities are of opinion that in order to ensure perfect health every woman should give birth to two children. Complete life is the fulfilment of all the natural functions. And the flimsy theory that to enable a woman to attain to the complete life is to put oneself in the position of her debtor, requires an amount of sophistical underpinning which would tax the resources of a Mahatma.

“But,” retorts the defender of despotism, “though you may have shown that the happiness of the two partners is equal, yet you must admit that the woman, being, to start with, a weaker creature, cannot bear children and attend to them during infancy, and at the same time earn her own bread on equal terms with the man.” I do admit it;

it is clear that the drain of vital energy implied by maternity must needs detract from the total individual vitality. I go further; I admit that two and two make four. And what is more (though this is rank heresy in the eyes of the Superior Person), I believe that my fellow-men have recognised the same recondite facts. I suppose the foundation-stone of despotism, autocratic or socialistic, is, and ever has been, the firm faith of the Superior Person in the crass stupidity and incorrigible criminality of other people. Recognising, as I have said, all plain facts, what is more natural than that a man should help to support the wife of his bosom and mother of his children? Love, honour, and justice all pull in the same direction. It is also an observed fact throughout the greater part of animal nature—the Superior Person might advantageously study the habits even of the little birds in the trees. And yet we are solemnly told that, but for the strong arm of the law—the artful machinations of the Superior Person himself—all these potent promptings of nature would be as cobwebs. I repeat that in the absence of all artificial law on the subject, the unequal division of labour between men and women would continue, and in all probability increase. Wives tend to do less and less work. In the well-to-do ranks of life the women of to-day rarely do any bread-winning work at all. But the tendency can be based upon a much wider induction. Any one who compares the physical strength and intelligence of a horse and a mare, or of a lion and a lioness, will admit that the difference in favour of the male is very slight compared with the difference between a man and a woman. He will also observe that a savage woman not only does more hard work, but is more capable of doing it than a civilised woman. This is attributable to the fact that, in spite of the keen struggle for existence, woman, instead of becoming more capable of self-support, is actually becoming less so, by reason of the willingness of the man to work for her. That State coercion is needed to back up one of the strongest impulses of humanity is too monstrous a contention to warrant further consideration.

It is further alleged that to break up the system of life-long marriages is to run counter to the monogamic tendency. But who wants to break it up? The tendency of civilisation towards monogamy is admitted; and what is more, it can be shown that the artificial restraints imposed by the law tend the other way. It is said that there would be a large number of one-year marriages dissolved at the end of the year. Possibly; but how many one-day marriages are there now? And how many mal-unions would be obviated? All those unions which ought by nature to be permanent would become permanent; and those which did not become permanent are precisely those which ought not to be permanent. To deny this is again to deny the monogamic tendency, and not to affirm it. And to dispute this tendency is to knock away the sole support of a marriage system of any kind.

But a free system, it is said, would lead to early marriages. True again; but what is there to set off against the possible risk of over-population? To begin with, a death-blow would be struck at prostitution; and in the second place, many persons, having at the normal age tasted the joys, etc., of matrimony, and experienced the burden of family cares, would probably be content in the future, or at all events for long periods, to sit in the cool shades of single blessedness. Again, how sweet are grapes that are out of reach! The thirstiest man is he who has no wine-cellar. The obstacles cast in the way of the natural satisfaction of the instincts only intensify the passions, and often divert them jnto morbid channels. And this suggests the answer to those who say that

it is not a question of choice between early marriages and prostitution; that there is a third course—celibacy. Are, then, the evils of enforced celibacy—of ungratified impulses—to count for nothing? Is it really good for man to be alone all through the period of adolescence up to the age of twenty-five or thirty? or for woman either? Is the effect on the race good? To what is due the mass of morbid and stimulating pabulum flung to our youth of both sexes in the shape of sensational novels, obscene pictures, dubious dramas, low music-hall performances, suggestive ballets, and meretricious entertainments of all sorts, with which London and Paris are deluged? Is it due to over-indulgence of the normal appetites, or to over-restraint? Away with cant; let us have the truth! I answer unhesitatingly, to over-restraint. Who are the customers of the purveyors of this garbage? Unfledged city clerks, servant girls, army loafers, disguised curates, people too poor to marry, any but happily married men and women. Let Mr. O'Brien point out any haunts in Constantinople to vie with the social cesspools of Paris and London. Crush Krakatoa, Mr. O'Brien—stamp out Vesuvius; and then, perhaps, we will entrust you with the task of stifling the natural instincts and impulses of healthy men and women. Attempt it you can; but at what a cost! Consumption and hysteria on the one hand, debauchery and disease on the other. Do the fertilising streams from the hills strike you as excessive?—then dam them if you dare. By Jupiter Pluvius, they will have their revenge, and the floods you yourself have created, will sweep you and your, barriers into the sea.

Now it is easy to fix our eyes too exclusively on the State as the great violator of personal liberty. Individualists are concerned to know, not only what it is the duty of the State to do, but also what it is the duty of a private citizen to do. Am I as a citizen justified in interfering with my neighbour's freedom to think what he likes and to say what he likes by turning my back upon him, by warning others against asking him to their houses, and by other well-known processes grouped together under the head of the social sanction? This also is a question for individualists. It is not correct to say that individualists, as such, are no more concerned with the ethics of marriage than they are with the harvest prospects or astronomical discoveries. So long as they admit the duty of the State to punish certain kinds of wrong-doing, they must be prepared to say what is and what is not wrong-doing in the domain of sexual relations. For instance, the English people generally regard fornication as morally wrong, and yet it is no longer even an offence in law; whereas other forms of sexual impropriety fall under the head of crimes, and are punished as severely as forgery or perjury, although third persons seem to be in nowise affected thereby. Again, there are certain agreements of this nature which, on the ground that they are “immoral contracts,” the State will not recognise. (Strictly speaking, they are not contracts at all; but that is a mere question of nomenclature.) Other agreements equally immoral the State recognises and sanctions. A girl who throws her personal charms into the scale against her suitor's money-bags, and sells herself into life-slavery for hard cash, is surely not less a prostitute than one who makes a time-bargain of a like nature. The law will give to the first her pound of flesh, but the second cannot even sue for the wages of iniquity. Is this fair?

In order to arrive at satisfactory conclusions as to what the State ought to do in these matters, it is absolutely necessary to discuss the ethical question, and ascertain what we ourselves ought to approve. We must ask ourselves point-blank what it is which

makes sexual intercourse sometimes right and sometimes wrong. Perhaps the answer of the ascetics is the most consistent. This school regards love as a devil to be exorcised. Man is a compound of two antagonistic elements, of a divine spirit which tends upward, and of a carnal carcase which tends downward. St. Paul, the Christian writer, holds this view very strongly. In a letter written to the people of Corinth, he says: "I would that all men were even as I myself. I say, therefore, to the unmarried and widows, it is good for them if they keep so, even as I do; but if they cannot contain, let them marry, for it is better to marry than to burn." In other words, marriage is a sort of half-way house between celibacy and fornication. It is better than the last and worse than the first. But this view is by no means confined to the superstitious. Philosophers of various schools endorse it. Even Mr. Herbert Spencer has more than hinted that the gratification of the sexual appetite is a tribute to the race at the expense of the individual. And Spinoza condemns love as "a species of madness," and as promoting "discord rather than harmony." I should have premised that a whole vocabulary of kakophemisms has been invented by this school, whereby the truth is darkened. Love is called "lust," the natural tendency to generation common to the whole animal kingdom is termed "sensuality." The love which arises from the contemplation of bodily beauty Spinoza calls "meretricious." St. Paul warns Timothy against young1 widows, because, says he, when they "wax wanton they will marry again; having damnation," And so forth. "Herein," says Mr. O'Brien, "lies the supreme advantage of monogamy: it is the minimisation of sensuality, and its reduction to the fewest possible terms compatible with the continuance of the race." And again he says: "Either the intelligence must grow at the expense of the beast, or the beast must grow at the expense of the intellect" (*vide* Lexicon of Kakophemisms: "Beast: a human being regarded from the standpoint of the Saint"). This is an honest and consistent attack upon one particular sense. One cannot pause to analyse the slight shades of difference in the opinions of those who adopt this general view—more or less. For example, John Milton and his puritanical followers compound with the devil by admitting that the "passion" is wicked—'*unless* sanctified by marriage. Spinoza, on the other hand, holds that it is wicked in any case. (For the precise meaning of "passion" again refer to the Lexicon of Kakophemisms: "Passion: strong love between the sexes, regarded from the standpoint of the Saint.") But apart from the kakophony, I absolutely dispute the doctrine conveyed. The intellect does not grow at the expense of the "beast," but by the evolution and elevation of the "beast." Love, in the sense of Eros, is simply "lust," refined, ennobled, transfigured. It is not the extirpation nor yet the minimisation of the appetites, nor of any of them, but their elevation, which makes life more beautiful. Why ride a tilt at one particular sense? Because it is so strong that most of us fall victims to it? But that is a coward's answer. Some savage races will not use fire for the same reason. Shall we also condemn music and the pleasures of the table? The good old saints and hermits so picturesquely brought before us by Mr. Lecky, were at least consistent. They condemned alike music, painting, sculpture, the drama, decorative dress, and even "tub"; and they therefore had reason in denouncing the love which springs from the contemplation of bodily beauty. It is sheer folly to denounce the refined gratification of one appetite, and to applaud the refined gratification of the others. Even the ascetics doubtless enjoy the fragrance of roses and honeysuckles. So, cats like the scent of verbena and musk. Dogs do not. Can the ascetics guess the explanation of this feline taste? The remarkable similarity between the aroma of the musk-plant, the "spikenard very

precious," and that of the secretion of the preputial glandular pouch of the musk-deer and many other animals, may furnish them with a clue. Neither do we love the perfume of the violet for no reason. The fact that our ancestors were dependent on wild honey for their saccharine supplies for untold generations explains it. Is it, then, a gluttonous piece of "animalism" to smell mignonette? Readers of Darwin's theory of the origin of music are aware that the cries of our early ancestors expressed the coarsest feelings—rage, fear, hate, lust. Shall we then regard the symphonies of Beethoven as a pandering to the "passions" of the "beast"? Then why call sensual pleasures "low"? It surely depends upon the degree of their refinement. Evolutionists are bound to admit that Man, by his ceaseless efforts to please all the senses, to gratify all the natural impulses, has soared from his original "beastly" condition to his present state of intellectual and moral pre-eminence. Not one of his senses has been neglected or excommunicated. Not one of them has even been weakened. As Sir Thomas Browne said: "Everyman truly lives so long as he acts his nature, or in some way makes good the faculties of himself." Socrates pointed out a couple of thousand years ago that so far from proportioning the exercise of the sexual function to the requirements of population, the reverse process had been followed by man. There is probably no species of mammal among whom there is so great a waste of this special energy—looked at from the standpoint of race-growth. But the like is also true of the appetite for food. No animal cats for the sake of the palate alone, apart from the nutritive effect of the food, in anything like the degree that man does. Does any other animal drink without being thirsty? Do other animals create sounds without any purpose or object other than that of tickling their own ears? To say that Man lives to eat is, after all, a truer statement than that Man eats to live. ' Man is the most sensual animal under the sun, and is becoming more and more so with the process of the suns. But his "sensuality"—let us tolerate the kakophemism—is becoming more and more refined and complex. It is steadily rising from the stage in which it is fairly described as sensual indulgence to the stage in which it is more intelligently described as the satisfaction of the emotions. That which is only a difference in degree, the ascetics persist in regarding as a difference in kind. As the gambols of the lambs are to a finished ballet, as the caterwaulings on the roof are to a sonata, as the tattooings of a cannibal are to the paintings of an Apelles, so is the "lust" condemned by the ascetics to the loves of Romeo and Juliet. We cannot exterminate the race of briars without slaying the rose of Damascus. If the Magician had cursed the crab-apple for being sour (as a fig-tree was once cursed for being unprolific), we should never have tasted Ribston-pippins.

I am very far from denying that there are forms of sensuality which may be justly described as "gross," or "coarse," or "earthly," or by any other term of disparagement, in the same way that any one who has soared to the epicure's pinnacle of taste for oysters and chablis may justly denounce as "gross" the taste of the coster for whelks and porter. Even the child's preference for cheesecakes and ginger-beer may be stigmatised as crude, immature, and perhaps "gross." Still, all three *penchants* are built on the same foundation—the sense of taste. The "beast," after all, lurks at the bottom of Mozart's *Requiem* and of Tennyson's *In Memoriam*. But he is a noble "beast"—refined, glorified, transfigured. Some one has spoken of the poetry of the dinner-table. Charles Lamb has gone nigh to apotheosising roast sucking-pig. And even the poor crabbed bigot, after his Lenten salad, will linger over some flower,

whose fragrance arouses the memory of half-forgotten days, with emotions widely different from the feelings of a tom-cat in a bed of musk.

I repeat that in the satisfaction of each sense there are degrees of elevation and refinement; and that no one of the senses can wisely be neglected or excommunicated. Love is the poetry of sexual desire, just as music is the poetry of sound. Let Dr. Johnson define music as the least disagreeable of noises, and let St. Paul describe marriage as the least objectionable form of carnality, if it please them. Similarly we may, if we choose, speak of the scent of the hyacinth as the least disgusting of stenches; but it is difficult to see what is gained by this use of derogatory phrases. Even the most puritanical of ascetics would not go about asking who was the least ugly woman at the ball, or which was the least loathsome dish at the banquet. Then let us have done with all this pessimistic phraseology in discussing this particular department of ethics.

There is another point. Perhaps the epicure is right in approving oysters and chablis. His good taste may be beyond cavil. Mr. Auberon Herbert and Mr. O'Brien may be quite right in eulogising monogamic unions as the highest and best. Personally I think they are. But does it necessarily follow that we are justified in denouncing all other unions? It may be that the coster really prefers whelks and porter. Again it may be that he cannot afford to pay for oysters and chablis. In either case it would be quixotic to reprove him for indulging his “low” and “beastly” appetite. It would be even more foolish to chide the child for preferring cheesecakes and ginger-beer. Its nature is not yet sufficiently developed to admit of its appreciating the “higher ecstasy.” Mr. Morris tells us that this will still be so in the year two thousand and one. Does not this argument seem to apply also to the marriage question? Is it necessary, because we believe in monogamic unions, both from the point of view of the individual's happiness and also as a racial tendency, that we should condemn all other unions without a hearing? Perhaps even “butterfly relationships” are better than none, and even good in themselves. Who knows? Let us at least suspend judgment till the contrary is *proved*. Just as it seems to be “ordained” that every child shall pass through the toffee age before rising to higher levels, so it may be well that our youth of both sexes should pass through a butterfly age before rising to the appreciation of the monogamic life.

There is evidence of a strong current of public opinion in this direction—an opinion, it is true, expressed in deeds, not words. The proverbs and commonplaces about “wild oats” all point that way. At all events the question cannot be dismissed without fair examination.

And this brings us to the analysis of chastity. I affirm with bated breath, but without fear of sincere contradiction, that the great majority of English mothers (even the most orthodox) prefer a son-in-law who has “sown his wild oats” to what I may call a *virgo intactus*. This testifies to a feeling that one who has passed through the normal stages is better fitted to appreciate the monogamic relation than one whose natural instincts are uneducated, stunted, or distorted. If this half-acknowledged sentiment concerning bridegrooms does not yet extend to brides, there must be a reason for it, and for that reason we have to seek. It is usually assumed that men prefer marriage with maidens

as such. But this strange assumption is upset by several considerations. Widows are not generally regarded as less eligible than spinsters. Nor, alas! is the distaste for polyandry so marked as to make adultery an unheard - of offence. The party who seems to object to polyandry in such cases is usually the husband. And yet, sexually, he seems to be in the same position as the paramour. I am sorry to have to touch on these unsavoury topics, but it must be added that the mania for young virgins, as a certain well-known writer has pointed out (inopportunely, as I think), is mostly confined to old and morbid men, whose habits or capabilities will not bear comparison with others, and who therefore seek after the inexperienced. A man's dislike to his wife's infidelity is probably net attributable to his personal antipathy for polyandry; but partly to his dread of supporting another man's mistress (which under the present barbarous system he does); partly to his dread of supporting another man's children; partly to fear of certain risks, which in the olden time was a well-grounded fear among all classes; partly to a natural dislike of seeing another preferred to himself, *a fortiori* publicly; partly, and chiefly, to a laudable desire for a monopoly of his wife's affection as distinguished from a monopoly of her person. This distinction is a very important one. It is noteworthy that a paramour who is sure of the monopoly of his *inamorata's* affection seldom cares much to obtain a monopoly of her person. The strength and persistency of this passion for a monopoly of affection is the best evidence of the monogamic tendency. This view is confirmed by the fact that wives are not less jealous than husbands, although obviously there is no danger of their having to support another woman or her children. That this monogamic yearning for a monopoly of affection is the true cause of what is usually set down to a horror of unchastity, is made even still more apparent when we reflect that jealousy is as strong a passion before as after union; that is to say, when the other part-causes are all inoperative. There is absolutely nothing to show that healthy-minded men would prefer inexperienced women as wives, beyond existing customs and prejudices.

Whilst firmly supporting the monogamic principle, and whilst fully persuaded that the highest civilisation of the future will be based upon that principle, I cannot shut my eyes to the facts. All the evidence seems to me to show that, just as all life is an evolution from the simple to the complex -just as our tastes progress from the crude to the more refined–so the monogamic relation is the last, crowning and most elevated sexual condition, to be reached only by passing through the cruder and less perfect condition during adolescence, when experience is on the make. It is as foolish to thrust monogamy upon young persons who have not seen life as it is to stuff Bach and Beethoven into the ears of children who naturally prefer ballads and simple melodies. And just as there are many who never rise to the appreciation of anything more complex than eight-bar melodies through life, so there are many who never rise to the appreciation of the monogamic relation. To denounce such persons is as unphilosophical as to denounce the poultry in the yard, or the polygamous patriarchs of the Old Testament. And to forbid them the highest happiness of which they are capable is rank tyranny and bad policy, whether it be effected by the State or by dominant individuals. Do we train our children to enjoy classical music by prohibiting *Little Bo-pcep* and *Sing a Song of Sixpence*? Do we drag them to sit through *Lohengrin* before they have developed a taste even for *II Trovatore and Faust*? Surely none would recommend such a training, except those who take their children weekly to sit through a lecture on the Origin of All Things before they have found out where

the water in the ever-flowing river comes from. There is yet another parallel. The stages of development through which the individual passes are similar to the stages through which the race passes. I need not go into the well-known morphological analogies. From prehistoric times down to our own day we have seen a gradual change from promiscuity, through polygamy, to monogamy. Among savage races to-day we see all the stages in actual operation, and well fitted to the tribes which are passing through them. Now, unless the parallel breaks down in this particular, and there is no reason why it should, we may expect to find a similar evolution in the case of the individual. And, casting cant, humbug, prejudice, and hypocrisy to the four winds, *we do find it*. Young people are not monogamic at first. It is the tritest of commonplaces that the younger a couple start married life, the less happy the union is likely to prove. You may as well pledge a youth of seventeen to remain of the same faith through life as to remain of the same taste. But the man who changes his opinions on fundamental questions after the age of thirty must be either a rickety soul or shockingly ill-educated. In like manner, a shifty lover of mature age betrays either an unstable nature or a bad training, or both. A well-balanced mind is "settled for life" when the lumbar vertebræ consolidate themselves.

If permanent unions are the natural outcome of civilised instincts, they will come without the assistance of the social tinker. If they are not, then we are fighting against nature as the Titans warred on the gods—in vain. The system is artificial and rotten, and must fall. For my part, I do not believe that even the approximation towards monogamy observable to-day among civilised races could have been imposed upon them from without. Even the terrors of religion could not have prevailed against the impulses of love, any more than the terrors of the deep prevailed against the voice of the siren. Throughout all the ages Religion has conformed to the current sexual customs. The gods of Olympus sided with the abducer of Brisēis; the God of the Hebrews rewarded the virtue of Solomon with hundreds of wives and concubines; the God of the Koran offers eternal promiscuity to the faithful; and the God of the Dark Ages only followed the rule binding on gods generally, by enjoining monogamy upon all who would be saved. No; the tendency comes from within. I believe in monogamy, not because it is good for the race, not because it is good for the husband, not because it is good for the wife, not because it is good for the children—but because it is good for each and all.

The mutual love which ends with the life, which is strengthened by time and memories and attachment to the children, and which is sanctified by freedom, is the latest and noblest development of the sexual emotion. Perhaps it may be left to the poets to speak of it. Perhaps only those who have experienced it can conceive it. And it may be that those only who have reached it by yielding to nature, and not by bending the neck to duty, can enter truly and sympathetically into the feelings of the grandam voiced by Burns:—

> John Anderson, my jo, John, we clamb the hill thegither;
> And mony a canty day, John, we've had we ane anither:
> Now we maun totter down, John, but hand in hand we'll go,
> And sleep thegither at the foot, John Anderson, my jo.

But there is a time for all things; and youth must not clamour for the joys of maturity, "Tannhäuser," says Mr. Bernard Shaw, "may die in the conviction that one moment of the emotion he felt with St. Elizabeth was fuller and happier than all the hours of passion he spent with Venus; but that does not alter the fact that love began for him with Venus. Now Tannhäuser's passion for Venus is a development of the humdrum fondness of the bourgeois Jack for his Jill, a development at once higher and more dangerous. … The fondness is the germ of the passion; the passion is the germ of the more perfect love."

This is excellent; and yet Mr. Shaw seems to hope that although for the present the way to perfect love lies through the Venusberg, the time will come when our children will be born on the other side of it "and so be spared that fiery purgation." Let us hope not. When that time comes, our children will be born with a preference for the music of "Tannhäuser" over *Pop goes the Weasel*; and the babies' rattle trade will be ruined. I think we may take it for granted that to the end of time "boys will be boys," and that we shall never be able "to put old heads on to young shoulders." Children will prefer toffee to cigars in the year of our Lord ten thousand; and young men and young women will pass through the groves of Idalia to the

> Sweet Love devoid of villainy or ill,
> But pure and spotless, as at first he sprang
> Out of th' Almighty's bosom where he nests;
> From thence infused into mortal breasts.
> Such high conceit of that celestial fire,
> The base-born brood of blindness cannot guess;
> Ne ever dare their dunghill thoughts aspire
> Unto so lofty pitch of perfectness.

All I propose is to leave this potent god to shift for himself, without the aid of a policeman.

It remains to consider three fairly formidable objections to a free marriage system:—(1) Married women's property would become a tangled skein. (2) The effect on the bringing up of the children of a divorced woman would be disastrous, and all the more so if she married again. (3) The danger of over-population would be considerably increased. Let us examine these objections in their order.

It will be generally admitted that the present dependent condition of married women as to their proprietary rights is a survival of the patriarchal system, under which the wives and children of a man were his own property. The system unquestionably worked well at one time, but even in its present modified form it appears to be somewhat out of date. It seems to lag behind the sentiments of the age. Marriage should in no way affect a woman's control of her private property; at least, there seems to be no valid reason why it should. It will be said that creditors of the common household (shopkeepers and the like) would have a difficulty in knowing to whom to look; and that the absolute mutual trust implied by love would enable married couples to cheat third persons. But there is an old saying, "Father and son can cheat the devil." And yet father and son are not compelled to enter into partnership. Of course, there is

much truth in the saying, but the remedy is obvious. The presumption should be reversed, that is all. When a husband wishes, for convenience' sake, to become responsible for his wife's debts, let him publicly notify the fact; and until this is done let shopkeepers beware. Or if a husband and wife wish to be jointly and severally liable, let them say so: it is an easy matter. As it is to-day, it is no uncommon thing to see a notice in the papers that Mr. X will no longer hold himself responsible for Mrs. X's debts. Besides, shopkeepers seem to have no difficulty in dealing with bejewelled ladies who cannot find their marriage - lines. The truth is, Married Women's Property Acts may be passed one after the other, but until woman has the full control of her belongings, both before and after marriage, her name will still be Hagar.

An incidental, but very considerable, advantage of this reform is that marrying for money would cease to be the paying game it now is. The spendthrift in search of an heiress would disappear from the scene; or, at the worst, he would find himself outside the door with his debts on his hands after a very short spell of probation. And the extinction of fortune-hunters—the eradication of this fatal incitement to unchaste unions—would mightily strengthen natural selection, and so improve the race. When a *blasé* old scarecrow marries a fresh young girl of eighteen summers, one can hardly blame him; perhaps he still believes in his own powers of fascination quite apart from his twenty thousand a year. And one can hardly blame the girl, who is quite possibly the daughter of a country parson with a dozen children and one hundred pounds a year. Who, then, is to blame? Why, the State, which sanctions an immoral bargain, every whit as bad *in se* as a bargain between a wayfarer and a prostitute; and in one respect worse, inasmuch as it is opposed to that policy of the law which will not in other matters enforce specific performance of a perpetual contract. Barbarities such as these—far worse than suttee—could not exist under a free system. So rank a weed can flourish only in the soil of despotism.

Let us now turn to the effect of the system on the bringing up of the children of the divorced woman. Either she would marry again or she would not. In the latter event they would be in the position of a widow's children. In the former event they would be in the'position of children with a stepfather. Both positions are unfortunate, but not so deplorable that the whole foundations of society need be dislocated in order to evade them. The children would, as at present, be provided for by the settlement and by the mother herself, and sometimes also by the stepfather. I have seen three families all brought up in the same household with complete impartiality—the children of the wife by her first husband, the children of the husband by his first wife, and the children of the present union. Again, it must be borne in mind, if the separation is due to the woman's love of change for its own sake, that not only are the most erotic women the least possessed of any natural love for children, as Mr. O'Brien admits, but also they are the least likely to have any. If, on the other hand, the separation is due to the man's unfitness for the monogamic state, we have only to ask, what would have been the condition of affairs if the union had been forcibly maintained? It is a misfortune to be fatherless, but it is a far greater misfortune to be brought up by parents who lead a cat-and-dog life. Even freedom cannot eliminate all the ills that flesh is heir to; it can at best diminish their number, and minimise the effects of the remainder.

Lastly comes the threadbare over - population question. I am not prepared to admit that, under a free system, in spite of early marriages, a larger number of children would necessarily be born. That they would be stronger, healthier, and more beautiful there can be little doubt. Natural selection would effect that. But would they be more numerous? It is a trite saying, and true withal, that youth marries in haste and repents at leisure. It is not to be expected that mere boys of nineteen and twenty should foresee and appreciate the full weight of family cares. They learn it to their cost by bitter experience. It is then too late to do more than repent. And what medicine is now prescribed for them by the orthodox economist? Is there not something revoltingly cynical in the advice usually tendered to the young married workman, whose work is hard, whose pleasures are few, and whose wages are at subsistence level? “Prudence, my good fellow, self-control,” cry Mill and his followers; “you cannot afford a large family.” And then come the neo-Malthusians with their nostrums. Surely, the obvious course, after a term of unwise matrimony, would be a term of celibacy with patience. Impecunious bachelors of the upper class remain unmarried. The last thing they dream of is to marry an equally impecunious girl, and then exercise self-restraint. But, to follow the career of the young workman. If he cared for his young wife and child, as most of them do (till the burden is too grievous to be borne), he would set to work with a will and a purpose to build up a home. It might be years before he was in a position to marry her again; but Jacob toiled fourteen years for Rachel, and a nineteenth-century Englishman is not less steadfast and persevering where the reward is love. Anyhow, during all that time he would be free to work and to move about in search of work, instead of being compelled to go on adding to the population and to his own burdens, as practically he now is. To those who object that his freed wife would take up with a new husband, I reply, You are as ignorant of woman as you are of man. There are households, it is true, where love flies out of the window as poverty creeps in at the door; but it is not of such that a race is built worthy of monogamy, and steadily tending towards it. Mutual respect and trust and hopeful encouragement would take the place of recrimination and remorse. Reunions, like any other object of a noble ambition, would be deemed not only worth fighting for and labouring for, but waiting for.

Finally, even granting that there might be more children, still they would be better provided for. The bulk of them would no longer be a proletariate of paupers, the outcome of a contract perpetuated by coercion. There is no stimulus to industry like the sight of the children's faces. And when the habits, customs and laws of a country are such that children are born in proportion to the means of support provided for them, we may possibly have an increased population, but we shall have a more equal distribution of wealth. And I do not hesitate to say that, under such conditions, an increase would be a blessing rather than a curse. Only to a free people is there any hopeful significance in the words, “Be fruitful and multiply and replenish the earth.” Who but a devil with his tongue in his cheek would pronounce such a blessing on the England of to-day?

In conclusion, I do not pretend to have touched upon all the difficulties of this highly complex problem. The questions with which I have dealt doubtless require further elucidation. But I trust I have said enough to show that the burden of proof rests on those who support the present coercive and restrictive system. I frankly admit that to

those who hold certain prevalent cosmic theories many of my arguments cannot appeal. But “to the solid ground of nature trusts the mind which builds for aye”; and from those who accept this method I claim an answer, more especially from that increasing body of thinkers who have given in a general adhesion to the grand doctrine of political liberty—that every citizen should be allowed the fullest and widest possible freedom in all things, so long as he or she does not infringe on the equal freedom of fellow-citizens.

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CHAPTER VII

Status Of Children

"Let us repeal the bastardy laws," said an advanced reformer to me the other day. "There is only one objection to that course," I replied, "and that is that there are no bastardy laws to repeal, A bastard exercises the franchise; he is taxed no more than his legitimate fellow-citizens; he can hold land; he inherits real property under precisely the same rules of inheritance as others; he succeeds to personal property as next of kin; he can attain to the highest offices in the State; in short, he enjoys all the rights and privileges of a citizen. What more do you want to give him?"

I hope I did not succeed in making myself misunderstood. The fact is, the law of England dubs no man bastard except at his own request, or, pending his infancy, at the request of one of his avowed parents. And even in the latter case, he is allowed to dispute and disprove such alleged parentage whenever it pleases him. It is true that no man can foist himself upon any family he thinks fit, without furnishing the required evidence of his kinship. I cannot become the son of the Duke of Bayswater, or of John Smith, chimney-sweep, by simply saying so, and without producing sufficient evidence of sonship. In this respect, all men are equal. As to what constitutes sufficient evidence, I shall inquire presently. There is only one slight exception to this law, and it tells in favour of the bastard. And this is termed the case of *bastard eigné* and *mulier puisné*. Here the bastard, though unable to furnish the required proofs of sonship (for the State will not accept even the testimony of the father as sufficient to justify it in foisting the child upon the family), is brought up in his supposed father's house as one of his own children. A legitimate child, that is, one able to furnish the required evidence of sonship, is born. If then the father dies, and the *bastard eigne* enters upon his land, and enjoys it to his death, and dies seised of it, then the eldest legitimate son and all other heirs are totally barred of their right. Black-stone regards this as a sort of punishment on the *mulier puisné* for his negligence in not entering during the bastard's life, and evicting him. But this does not explain why all other heirs should likewise be barred. It should be added that this rule applies only when the two sons are by the same mother, who was unmarried at the time of the first son's birth but married at the time of the second son's birth.

Let it not be supposed that I hold a brief for the State, or that I am in any way concerned to whitewash its manifold inconsistencies, illogicalities, and stupidities. One of these I will now proceed to point out. Be it premised that the State has pronounced in favour of the sanctity of human life, and that it will on no account permit of infanticide. Be it further premised that it will on no account itself undertake the maintenance of what used to be called a *filius populi*, but which is now more correctly described as *filius nullius*. Now Susan Jones has a baby. Who is to support that baby? The State argues thus:—The most likely person to do so is Susan. Mothers usually do voluntarily support their own children, because, as the saying is, they love them. And if they do, they ought; and if they ought, they shall. In the quaint and

childlike words of Blackstone, Susan "finds a thousand obstacles in her way-shame, remorse, the constraint of her sex, and the rigor of laws—that stifle her inclinations to perform this duty; and besides, she generally wants ability. The laws of all well-regulated States have taken care to enforce this duty; though Providence has done it more effectually than any laws, by implanting in the breast of every parent that natural ατοργ?, or insuperable degree of affection, which not even the deformity of person or mind, not even the wickedness, ingratitude and rebellion of children, can totally suppress or extinguish."

Hence the State says to Susan: "Having regard to your ατοργ? or insuperable degree of affection for that child, you will be good enough to maintain that child, or go to prison." To which the amenable Susan replies: "I am willing, but unable; I have not got a brass farthing; I cannot even support myself, much less this child; what must I do?" The State then explains that the best thing she can do is to point out the man who is most likely the father of the said child. Having done which, the State summons and examines the selected man (let us call him John Smith), who stoutly denies the allegation. Whereupon the State, in the person of two worthy Justices, thus apostrophises him:—"Although the evidence of your paternity adduced by this woman is, by the rules which we in our wisdom have laid down, insufficient to prove the same; and although we cannot therefore decree that the child is in fact your son for the purposes of inheritance and succession; nevertheless, seeing that Susan *can* not support the child, that we *will* not support the child, and that somebody *must* support the child; seeing also, by reason of your lame and impotent defence, that you are the least unlikely of all men to be the father of the child; we do hereby decree that you are liable for its support so long, and only so long, as Susan remains unable to earn more than enough to keep body and soul together. And the child shall be called your bastard child, and you shall be called his putative father. For just as the sherry xvhich we have had for lunch, though not in fact and in truth a quart (which is and shall be the fourth part of a gallon), yet is it a reputed quart; so also you, though you be not by the true measure and assize of our laws the actual and proven father of this child, yet are you the reputed father." By this logic does little Joshua the son of none become at the same time Joshua the son of John Smith, and perhaps also, as some do falsely boast, Joshua the son of the people.

But the inconsistency of the State does not end here. Having laid it down that Joshua is not of the kindred of John Smith's family, yet when he comes to marry, it interposes and says: "Though you are not of the family of Smith, yet you must not intermarry with any of those who would be within the prohibited degrees if you *were* a member of that family. For although we do know by our laws that you are not of the kindred of Smith, yet we do in our hearts believe that you are." And so for a second time it befalls that Joshua both is and is not the son of Smith.

But setting on one side these singular freaks of the law, as of very slight importance, the position of the State is a just and reasonable one. To begin with, an affiliation order does not make the alleged bastard the son of his putative father; it merely establishes a. *primâ facie* presumption, for the child's own good; a presumption, too, which may at any time be rebutted by him on the very flimsiest evidence. It is for this reason that although legitimate children are compelled to maintain their parents in old

age, at least to the extent of "keeping them off the rates," the bastard is under no such obligation. Should he wish to remove "the stigma of bastardy," he has only got to say that his deceased mother told him that his putative father was not his real father; that she formerly said he was because she really did not know who was, or because she wished to conceal the true parentage, and to shield the man she loved, or because the actual father was impecunious, whereas the selected father was rich, or for any other reason whatever; and the thing is done. Hence, if an alleged bastard should really wish to marry his alleged natural sister, or his deceased natural brother's widow, he has only to repudiate his own alleged father, and he can do so.

On the whole, then, I fail to see any grievance whatever of which bastards have good reason to complain under the law of England. They have a few insignificant privileges, and no serious disabilities—and even these can be easily removed.

Then why, I shall be asked, have I accepted the Presidency of the Legitimation League? Let me try and answer that question.

The law of England has marched forward on the lines of individualism with a thoroughness unexampled in the history of nations. Any man can disinherit his children, or any of them, by will. He is not even compelled to leave them a reasonable subsistence. The child's ancient right to the *pars rationabilis* has been taken away in every case. By an Act passed in the reign of William III., if a Roman Catholic refused to allow his Protestant child a fitting maintenance, with a view to compel him to change his religion, the Court of Chancery might compel him to do what was "just and reasonable." And in the reign of Anne, a similar remedy was provided to force Jews to provide a suitable maintenance for their Christian children. But both these Acts were very properly repealed in the present reign. And now every man's property is absolutely at his own disposal. He can pass over all his legitimate children, and leave everything he possesses to his natural child or to his mistress, or to any one else.

It is clear, then, that the bastard and the legitimate child are on an equal footing in this respect. And, in fact, there are but two classes of cases in which their positions differ, viz. in the case of inheritance and in the case of intestacy. To the thoughtless it might at first sight appear that there was no longer any reason why the State should at any time ask a man to point out his father; that it was a matter of complete unconcern to the State how a man carne into the world. But a little reflection will show that in the two cases mentioned the State is compelled, not only to ask the question, but also to take the greatest pains to see that it receives a truthful answer. Suppose somebody grants an estate to John Smith and the heirs of his body; that estate will descend from John Smith to all his lawful issue in a regular order, so long as there is any such issue, without any further trouble on his or their part. This will happen without any expression of will on the part of any of them. Indeed, the expression of a will to the contrary is required to alter the descent. If the eldest branch of John's family should fail, the estate will pass perhaps to a distant relative who may never even have heard of it. Now, in such a case, it is clear that the claimant must prove to the satisfaction of the State that he is in fact the son of the person through whom he claims to inherit. In order to do this, he must furnish the kind of evidence required by the State. Rules of some kind as to sufficiency of evidence are absolutely necessary to save time and to

make deceit difficult. Just as, by the Statute of Frauds, the State declines to recognise, or even to look at, agreements to buy and sell land, unless those agreements are in writing, so it very wisely declines to hear any evidence of claim to inheritance, unless the evidence of descent is furnished in the required form.

Similarly, when a man dies without making a will, his personal property is distributed among his next of kin according to certain fixed rules. These rules are based upon observation of what is usually done by persons who do make wills. And this is surely the fairest way to deal with the property of an intestate. But, in order to do this, it is necessary for the State to know who *are* the next of kin. The evidence required is of the same kind as that required in a claim to inherit land. Thus even though real-property law may be absorbed in the law relating to personal property, as some reformers hope, the State can never evade the duty of defining legitimacy.

The State never interferes with a man's reputation in regard to his parentage until he himself raises the question by setting up a claim to inherit property or to succeed to property in case of intestacy. And no man is forced to put in a claim if he does not choose.

But the question now arises, Does the State really desire to get at the truth? Does it endeavour to find out whether a claimant is *as a fact* the offspring of the intestate, the actual physical descendant of the person from whom he claims to inherit? Or does it restrict its efforts to ascertaining whether he is of a particular class and kind of such offspring? Is the evidence required such as is best calculated to prove that the claimant is or is not the actual offspring, or rather that he is or is not one of a species of such offspring? Firstly, if so, what is the kind or species which the State tries to select? Secondly, does it succeed in its quest? Thirdly, is the selection a desirable one from the point of view of race welfare?

I shall show that the State does exercise a selection: that such selection was originally based on sound physiological principles: that it utterly fails in its endeavour: and that the laudable object may be attained in another and better way.

Now, what is the best evidence of paternity practically procurable? The solemn declaration of both the parents. And the value of this evidence depends greatly on the time at which it is given. The declaration of belief may be made before the conception of the child; or it may be made at or shortly after the birth of the child; or it may be made at some subsequent date. The first is, in the strictest sense of the term, marriage; and the other two are adoption; but the value of the evidence is considerably weakened by lapse of time. I am now speaking of the evidence of paternity. Maternity can obviously be far more satisfactorily proved by the evidence of disinterested persons. But surely it will be admitted that a declaration of belief, made after the birth of the child (immediately after), is even stronger evidence of paternity than a mere declaration of intention and confidence made before its conception. This shows that the State, which accepts what may be called the evidence of marriage, but which ignores the evidence of infant adoption, is not so much actuated by a wish to ascertain the true paternity of the child as to find out whether it belongs to a special class of such offspring.

And upon what distinction is this classification based? Let us begin at the beginning. I have a couple of thorough-bred Irish terriers: one of them is, in Victorian English, a lady-dog; the other is not. Now, I can sell the offspring of this union in advance for a long price. But if the gentleman takes a walk, and, inspired by original sin, becomes the father of what Mr. Oswald Dawson styles a “chance pup” by a mother who is a half-bred pug, then that pup would not fetch a shilling in the market. He might grow up to be an affectionate, plucky, and clever little dog, but the chances are against him. And in any case, without attaching any blame to him personally, we should call him a mongrel and a cur, and he would be shunned by all dog-fanciers.

Yet surely a thorough-bred man is as much to be desired as a thorough-bred dog, horse, sheep, or ox. The Spartans applied artificial selection to the adult population and strictly regulated sexual unions. Other peoples have applied artificial selection to the offspring, and encouraged judicious infanticide. But with the march of Individualism, it has been found necessary to leave the family to manage its own purity, and to keep itself as thorough as may be, at the risk of coming to grief in the struggle for existence. And with what result? Family law has been imposed on the individual members, not from above, but from within. Family law is an outgrowth of the family, and in no way the arbitrary invention of the State of which the family is a unit. And, consciously or unconsciously, the family has been actuated by pretty much the same motives and aims as those which actuate the cattle-breeder to-day. Sentiments are not artificially created by priest or by legislator. They are natural growths, and for the most part well founded. It is not necessary to blame the bastard, any more than the mongrel, in order to admit that he is or was less entitled to respect, on the average, than his legitimate fellow-citizens. One attaches no blame to the ugly woman—in correct Victorian English, the plain woman—from whom one is constrained to withhold admiration, nor to the poor idiot, whose imbecility we pity but despise.

We are all of us conscious believers in heredity nowadays, and even in pre-Darwinian times we were unconscious believers. We bred our horses and dogs, our cattle and sheep in the sure knowledge that traits and characters are handed down from sire to son. Hereditary monarchy and hereditary peerage are alike products of this faith. The son of a brave man is more likely to be brave than the son of a coward.

But what has all this to do with bastardy? Bastards are as likely to be brave, and have shown themselves as brave, as others. True; but it is probable they will inherit the moral flabbiness, the uncontrollable impulse, the selfishness, and the lack of self-respect which usually characterise one or both of the parents of illegitimate children. This is a stubborn fact, which is not only antecedently probable, but actually observed. A man, for example, who is disowned by his father on account of the inferior social position of his mother, or because of the ephemeral and unholy tie which bound them—such a man is very likely to inherit his mother's incivic weakness and folly. And the children of immoral parents are no less to be shunned and suspected than the children of diseased, deranged, drunken, or low-caste parents.

Again there is no denying that monogamic races have as a fact shoved themselves to the front in the great struggle; and, even if we had no better reason for accepting the

monogamic principle, this alone would justify us. It follows that the family has a right to frown upon, to account tainted, and to besmirch, the offspring of polygamous and promiscuous unions, in the just belief that such unions are likely to hand down to posterity a lower and baser type of emotion and of conduct. We are therefore forced to the conclusion that the State, which has adopted the family law from the family, is physiologically justified in trying to make a selection of offspring, and in clothing some with honour, and some with dishonour. We do the same thing with our own subject or domesticated races of animals.

The next question we have to answer is this: Does the present-day law of England, relating to parent and child, succeed in excluding from the ranks of legitimacy only or mainly the children of dissolute and inferior persons? Does it not rather exclude many of the worthy, and include many of the unworthy? If we find that this is so, we shall have good ground for altering the law relating to legitimacy. Take a few instances. Is the man who, years after his wife's death, asks the hand of the loving sister, who has ever since watched over his children and presided over his household, rightly described as a victim of sudden and selfish passion? Or is *she* more likely than other women to be actuated by sordid motives? Again, here is a man whose wife has for years been confined in a lunatic asylum. He meets with a woman in his own station of life, who is willing, in spite of Society's reproach, to share his lot for better or for worse, and to hand down his name and his blood to posterity. Is there any reason to suspect inferior moral qualities in either of these two? Moreover, there may be many, there are many, who entertain the strongest conscientious objections to perpetual vows. They will not promise what they may be unable to perform. With every reason to hope that they may be suited each to each through life, they dare not swear as to the remote future. Does this self-possession and scrupulousness indicate a low moral tone? Precisely the reverse. Believers in monogamy, they are not believers in the ability of youth to forecast the tastes and yearnings of maturity. Yet they have sufficient mutual faith to trust one another, and to await with hope the unseen developments of time. Surely none will be found to pretend that the offspring of such unions are likely to inherit unsocial and immoral qualities. Perhaps I should be venturing upon thin ice were I to plead for the youth and maiden who, in the summer madness of love, so far forget themselves as to yield to impatience. It is unnecessary for me to do so. Here, as it happens, they have the support and sympathy of the law of England—of the very State itself. “For if a child be begotten while the parents are single, and they will endeavour to make an early reparation for the offence by marrying within a few months after, our law is so indulgent as not to bastardise the child, if it be born though not begotten in lawful wedlock.” Such are the mild words in which the severe Blackstone essays to whitewash the somewhat lax morality of this Christian State. Yet lax it is, judged by its own standard of morality, and by the principles upon which its marriage law rests. More logical, more honest, and certainly not less moral, is the law of Scotland. If, says the Scotch law, the original sin of the parents is not sufficient to bastardise the child, why should we draw the line at its birth? Why indeed? And having got so far, it pushes the principle still further, and allows the legitimation of a child at any time, by the subsequent marriage of its parents. And this is not affected by the fact that either or both parents have subsequently contracted marriage with other persons. Thus does the Scotch law in effect tolerate bigamy. I am not complaining of this, but merely pointing out that one

transgression from principle necessitates another, until a condition of complete self-stultification results. Blackstone very sagaciously criticises the Scotch law as neither politic nor kind. It leaves the child in doubt, perhaps life-long doubt, as to whether it is destined to die a bastard or legitimate. It, moreover, lends itself to gross displays of parental partiality; and in some cases to downright fraud, difficult to detect. And what is still worse, it would upset all the salutary rules of inheritance but for yet another violation of principle, by which it is provided that the eldest legitimated child is not to be accounted the eldest, but is to rank as though born on the day of his legitimation. This concession to reasonable expectation it is compelled to make, lest it should blast the whole venerable edifice of *status*. Strange to relate, no such concession is made in the matter of succession to the property of an intestate. Here the quondam bastard of a week's legitimation may rank with those who have lived on their expectations for half a century.

Let us now compare the evidence of legitimacy required by several peoples. The law of the early Roman Republic recognised two processes; one was by the original and consistent form of marriage, by which a man admitted his fatherhood of any child that might be born of the woman he was marrying, stating that he believed in her virginity and in her loyalty and faithfulness to himself alone. The other was the admission of the man that he was to the best of his belief the father of a particular child living and indicated. The former process was legitimation by marriage, and the latter was legitimation by adoption.

The English law allows of only one form of legitimation, which is neither one thing nor the other. It amounts practically to the adoption of a child before its birth, coupled with going through the form of marriage (an incomplete form) with the child's mother. The Scotch law permits the adoption of any child at any time, by the mere formality of marrying the mother. The French law is similar to the Scotch, but it also permits of a certain qualified adoption, without marriage or the form of marriage, called public acknowledgment, and based on the old Roman form of adoption. The law of the Catholic Church (called Roman) is similar to the Scotch law, except that it insists on the *form* of marriage being gone through, whereas the Scotch law is quite satisfied with the fact of monogamic union without the outward and ceremonial proof thereof. There are many sub-varieties of legitimation in monogamic countries, but they all agree in requiring the father's acknowledgment of paternity in some form, either before conception or before birth or at some time or other, and in requiring some evidence of a monogamic union between the father and mother.

Now which of these two factors is the cardinal and essential one? Why, the French law actually allows the acknowledged bastard to succeed to his father's property as next of kin; thus enabling him to hand down to posterity the very traits which it professes itself anxious to stamp out. And the English law permits of divorce and remarriage, which is a distinct deviation from the monogamic principle. And Scotch law is even more unprincipled than either. Then why beat about the bush, and make believe? Let us face the truth boldly. The State has given up all hope of upholding the monogamic principle by force. It recognises the folly of trying to make men moral by law. Then away with all this cant and coercion. The monogamic principle will take care of itself. It is a natural tendency, and not an artificial creation of the State. And

what, after all, are these vaunted virtues which the State professes itself so anxious to uphold? And these vices it is so anxious to suppress? What virtues do our present marriage laws preserve? Patience, self-control, prudence, constancy. Yes; and what compensating vices do they encourage and engender? Sordidness, life - long prostitution, deception, and secret faithlessness. To what else is due that cesspool of abominations, the marriage market? Then let the law leave morality to take care of itself, and restrict its energies to the redress of injuries, and to the doing of justice. In the particular matter of legitimation, let it fall back on the father's acknowledgment of paternity supported by sufficient evidence, as the one test of legitimacy, and leave the rest to the advancing good sense of sane men and women.

Abolish affiliation orders root and branch, as in France. Trust to the good sense of women not to bring children into the world who cannot point to their father with his glad consent first had and obtained. And let public acknowledgment of fatherhood be sufficient *primâ facie* evidence of legitimacy, until the contrary is proved. This is now the law with respect to children born in wedlock. The law permits the parentage to be brought into controversy. If it can be shown that the husband was out of the kingdom for nine months before the child's birth, or was impotent, or that husband and wife had no opportunity of intercourse, or that they were judicially separated—in any such case, the child may be pronounced a bastard. And if such cases are extremely rare under the present system, they will be equally rare under a system of greater liberty.

A rational system of marriage contracts, coupled with a rational system of registration of parentage, is all we need. The rest may safely be left to the individuals chiefly concerned.

Under our present system there are two distinct classes of bastard. The first consists of those born out of wedlock, whom their parents are ready and willing to acknowledge. These know the blessings of a mother's care and a father's love. The State has neither moral right nor valid reason to stand in the way of their honourable legitimation. These children have been prettily termed “love-children.” Then there is another class, consisting of the unfortunate offspring of ephemeral, coarse and brutal passion, aptly but somewhat flippantly described by Mr. Oswald Dawson as “chance children; the results of little accidents in mills, and the like.” They will probably inherit the selfishness of the father and the foolishness or recklessness of the mother. No name-giving can mend or mar them. Under any system, until human nature rises to a higher plane, these ill-equipped citizens will be born to excite our pity, but they must ever remain the bastards of the people.

Mr. Fisher, one of the vice-presidents of the Legitimation League, who has recently written on the subject of illegitimacy,[1] is usually clear and always original, but I confess I am utterly at a loss to make out the drift of his “plea for the abolition of illegitimacy.” He seems for once to have completely confounded law and custom. In the belief that he is riding a tilt against the law, he is in reality merely condemning the popular use of unbecoming language. He complains that certain persons are “stigmatised by opprobrious designations, such as bastard, illegitimate, and the like.” So they are: similarly, other persons are stigmatised as “mashers,” “negroes,” “lunatics,” and even “females.” Whether or not it is a disgrace to be unable to point

out one's father is a matter of opinion; but it does not alter the fact that many persons are in that position. Then what shall we call them? Illegitimate? Or bastard? Will the word "natural" suffice? But it is not the *word* to which Mr. Fisher objects. It is the unkind thought which usually accompanies its use. And yet no one is bound to think with anger or contempt of a neighbour merely because he is compelled to call him "illegitimate" or "bastard" or "natural." This is a question for the pulpit, and not for the political platform. When I describe a man as a "masher," I mean that he dresses and comports himself in the latest fashion and with somewhat of exaggeration. I confess I think unkindly of such an one. Some persons hold him in esteem. It is a matter of taste. "Lunatic," again, is an "opprobrious designation," because it is pitiable and even contemptible to be far below the average in intelligence and self-control. Is Mr. Fisher going to bring forward "a plea for the abolition of lunacy"? Or will he make it a penal offence to think ill of lunatics or mashers or niggers or bastards?

Now, Mr. Fisher is no Don Quixote, and there must be some reasonable explanation of his attitude. And I think I have found it. He actually believes that illegitimate persons are saddled with legal and political disabilities. There are several passages in his pamphlet which confirm this conjecture. He proposes "to repeal all laws denning illegitimacy." There are no such laws to repeal. A bastard has all the rights of an ordinary citizen. He exercises the franchise, he can hold land, he can inherit land from his own issue (that is to say, his only possible relatives), and he is in all respects on the same political level as his legitimate fellows. All the State does is to say to him (and to everybody else), "If you wish to rank as the son of any particular man, you must show that your mother and he were already married at the time of your birth." When Mr. Fisher says this is a foolish regulation, and too narrow a condition, I agree with him. If it is based on morals, it is too loose, because it ought to require the claimant to show that his parents were already married when he was begotten. And if it is based on other considerations, it can be shown to be unnecessarily exacting. Here we are all agreed. But when it is proposed to abolish *all* conditions, I stare in blank amazement. What is to prevent the first boy in the street from claiming Mr. Fisher as his father, in making use of his credit, and in succeeding to his property among the next of kin at his death,—supposing him to die intestate? Surely this is not the intention of the writer. Then what can it be? Is it this? That each child is to be allowed to say," I am the acknowledged son of somebody, but I decline to say of whom. "But any child can say that now, and the State will not interfere with him. It is only when he claims to be the son or daughter of A. B., that, in the interests of A. B., the State says," Prove it. "Surely this is right and necessary. It is a very serious thing, not only for A. B., but for all his kith and kin", to have a new relative foisted upon them. For purposes of kinship and succession the proofs must be convincing and conclusive. We may differ as to what they should be, but surely we shall all agree that they should be of a vigorous and thorough character. The French law will accept nothing less than the open admission of the father himself. And the English law will accept nothing less, for purposes of succession, than the admission of the father himself *before* the birth of the child, and in the public form known as marriage. It is a cruel and wicked thing to disappoint reasonable expectations, and our humane laws are based upon this. So far as the children are concerned, marriage properly means the acknowledgment of paternity before the conception of a child, but in English law it means the

acknowledgment of paternity before the birth of a child. With the rights and obligations imposed by the State upon married persons we are not now concerned. For example, the State says, “Once married, always married.” This may be wise or foolish. The State says the man, called the husband, shall be liable for the debts of the woman, called the wife. Custom expects the woman to adopt the name of the man. The State will not allow the man, in case of the woman's death, at any time to marry any of her relatives within certain prescribed degrees. Indeed, the regulations concerning married persons are numerous and detailed enough to fill many volumes, and to occupy the time and thought of many lawyers and courts of justice. But this in no way alters the fact that marriage means, so far as children are concerned, the acknowledgment of paternity before the birth of the child,—simply that and nothing more. It is true that our State will accept no other proof of paternity for the purposes of property law. It will not even accept the public acknowledgment of the father after the birth of the child. Nor will it accept any form of parental acknowledgment except that known as marriage. And there is much to be said for this. Why should any facts be concealed which concern the welfare and the career of others? A man dies intestate, leaving three children by his wife. Suddenly up springs a claimant with an acknowledgment of paternity in his pocket. The eldest of the three children of the marriage expected to inherit his father's land and houses; all three expected to succeed to a share of his personality as next of kin. The whole career of the eldest has been modified perhaps in accordance with this expectation. And now all these hopes are dashed to the ground. Surely this is unnecessary and cruel. Even the Scotch law refuses to allow a child legitimised *per subsequens matrimoniuin* to take precedence of the children born in wedlock, even though he be the eldest. Then by all means let us simplify our law of acknowledgment of paternity, but to talk of repealing it altogether seems to me absurd.

“The conventional connection,” writes Mr. Fisher, “between so-called legitimate kinship and heirship is to some minds indissoluble, and the extraordinary phenomenon is actually witnessed of certain fearless thinkers incapable of performing such a simple analysis as supposing them to exist apart.”

I am then singled out as one of these unfortunates, and charged with having discussed the question of inheritance and succession to the almost total exclusion of all others, in my presidential address to the Legitimation League.

I did so; but I had not then a glimmer of suspicion that any one present actually believed in a *status of illegitimacy* above and beyond the mere denial of a special kinship. I should as soon have thought of condoling with Mr. Fisher on his being stigmatised as the non-brother of the Czar of Russia. So he is; but does that constitute what Mr. Fisher calls “an individual status,” as distinguished from “a relative or reciprocal one”?

I fear I must admit having used language in the said address which almost justifies the interpretation put upon it by Mr. Fisher, unless carefully construed in the light of the context. I said, “It seems hard that innocent children should be branded with a lifelong brand of bastardy, as the result of folly or impatience, or it may be weakness over which they had no control.” What, in order to be more explicit, I ought to have said is

this: “It seems hard that the State should insist on branding as bastards those whose parents are willing and ready to remove the stain.” This is what I understand to be the object of the League; and had it been more than this, I for one could not have taken any part in its establishment. Nor can I accept Mr. Fisher's amendment of the League's own statement as to its aim. The League, says he, has been established with this object: “To create a machinery for acknowledging offspring born out of wedlock, and to secure for *them* equal rights with legitimate children.” He continues: “These objects would possibly have been better stated in the reverse order, thus: To secure for offspring born out of wedlock equal rights with legitimate children, and to create a machinery for acknowledging them.” Now this would amount, not to stating better the objects of the League, but to stating quite other objects,—objects quite foreign to the intentions of the League, The true aim is to create a machinery enabling parents to acknowledge offspring born out of wedlock, and to secure for them (that is, such *acknowledged* children) equal rights with children born in wedlock. This is a very different thing from proposing that the law shall secure for all bastards equal rights with legitimate children. They already have equal rights in all respects save one; hence if the proposal means anything, it must mean that the law shall thrust the bastard by force upon the family of the putative father, with or without the consent of such putative father or his kinsfolk. After this, what is the use of creating a machinery for acknowledging them? Surely such machinery would be a laughing-stock? What need would it supply? In other words, Mr. Fisher proposes a compulsory law, and supplements it by an enabling one. As for his quarrel with the names conferred on illegitimates, it may suffice to say that even if they were dubbed “hero” or “angel,” those names would soon degenerate into terms of reproach and insult; but when it is contended that “they need not be dubbed by any distinctive epithet,” the answer is, they are a distinct class of persons and must have a class-name.

Having now unearthed the “fixed idea” which underlies these peculiar views on legitimacy, we shall be prepared for the remedy proposed, viz. “to introduce a law whereby all children not adopted by any one might become legitimate persons without bonds of kindred with any one, by the mere repeal of the laws which establish illegitimacy.”

If “bastards” were outlawed, or disenfranchised, or specially taxed, or otherwise ill-treated by the State, there would be force in this proposal; but, seeing that they stand on the same footing in every way as those who are legitimate (except as to their claims on the property of particular persons), and that, in short, *there are no laws establishing illegitimacy*, I fear Mr. Fisher has been battling with imaginary foes.

What, then, was the object in forming the Legitimation League? Was it for the purpose of inculcating the principles of charity in all things? Was it intended to teach the duty of treating the illegitimate with the courtesy and respect which is accorded to those born in wedlock? One might as well form an association for the purpose of inducing Bostonian ladies to invite negresses to their *salons*; or for the purpose of mitigating the disdain with which school-boys look down on their sisters and girls generally; or for the purpose of filing down the asperities which embitter the intercourse of Jews and Aryans. No, the league was formed to bring about a change in the law. Only time and culture can effect a change in the feelings with which bastards

are usually regarded. But if there is no status of illegitimacy, and if bastards suffer no legal or political disabilities, what is there to reform? I will answer. To begin with, why should the community concern itself at all with the relationship of individuals? What business is it of ours whether A. B. and C. D. stand to each other in the relation of father and son, or in any other relation? The answer is three-fold. Parents being by law held responsible for the care, maintenance, and education of their children, it is necessary to know who the parents of a child are before the law can be enforced. Furthermore, the law provides that where a man dies intestate, that is to say, when his will cannot be found, his property shall be distributed as he would himself (judging by the average) have distributed it. Now, most men leave their property, or the bulk of it, to their children. It therefore becomes necessary for this purpose also to know who the children are. Thirdly, the law requires children to support their parents in old age within reason, rather than allow them to come upon the rates. This is a sort of compulsory gratitude, and it also requires a knowledge of the state of the true relationship of the individuals concerned.

There is one other reason why the State should possess this knowledge, but I will pass it over for the present, seeing that it is based upon principles of English law which are in a state of decay, and which, it is to be hoped, will not long survive.

So far as the above three reasons are concerned, it would seem that a system of legitimation might be devised in every way simpler and more convenient than that of marriage alone. For instance, the acceptance of responsibility for the maintenance of the child would, if publicly made by anybody of sufficient substance (say, by registration), satisfy all the requirements of the State, so far as regards the care, maintenance, and education of the child. It matters nothing to the community whether Tom Jones or John Smith undertakes these duties, provided they are undertaken by somebody.

Again, the mere registration of the child as the son of A. B. is sufficient in these days of freedom of bequest to justify the State, in case of A. B.'s intestacy, in ranking the child so registered as his son. To those who say, “But he may not be his son,” the answer is simple: he proposed to treat him as such, and the State has only to consider the probable wishes of the deceased.

Finally, as to the liability of the child for the maintenance of its parents in old age and infirmity, it is enough to say that the present position would remain unchanged. Let A. B. register a certain child as his own; let him bring him up, maintain and educate him, and then suppose proof to be forthcoming that the child is not his son; in such case, it may be urged, the child would be in a position to repudiate all liability, and the father would come upon the rates. True, such a case might arise; but so it might now. The birth of a child in wedlock is only a *primâ facie* presumption of its legitimacy. The law permits the point to be brought into controversy.

Without going further into details, it is clear that the three requirements above-mentioned would be fulfilled by the simple process of public acknowledgment, the simplest form of which is registration in a public office. Such registration of parentage would be sufficient evidence of the alleged parentage, just as the marriage of the

alleged parents now is, until the contrary should be conclusively proved. It would make the registering persons responsible for the maintenance of the child, and it would make the child responsible for the support of the registering persons in old age. And it would further indicate the wishes of such persons in case they should happen to die intestate.

The fear lest a couple of tramps should call at the register office and register themselves the parents of the Duke of Bayswater's first-born, is not a well-grounded fear: for, as I have pointed out, registration constitutes a *presumption* only, which would be very easily disproved.

Says Mr. Fisher: "A claimant father not only appoints the claimed son his heir, but appoints himself the son's heir." And this brings me to the State's fourth reason for busying itself with the kinship of citizens. I postponed the discussion of this fourth reason, because it belongs to another class of legal questions. It is an outgrowth of the old law of status, and is quite out of harmony with our extended system of free contract. Time was when a man could devise no part of his property as he thought fit. Certain definite persons had claims upon it which he could not resist. Such persons were related to him by blood, and their rights formed a most intricate and complex web. How carefully these tables of consanguinity were chronicled and preserved among the titled and propertied classes, is evidenced by the fact that Henry IV. of France succeeded to the throne through the sixth son of a predecessor who died about three centuries earlier, during the whole of which time his blood-rights had, so to speak, smouldered in the form of parchment. Now this system, though scotched, is not yet killed. Mr. Fisher is right, therefore, when he points out that a man, by registering himself the father of a child, by that very act "appoints brothers, uncles, and their female counterparts, as well as cousins and other remote relatives." In short, a man could by this simple process create and manufacture an heir out of a stranger in blood to the detriment of the lawful heir. But here again this is frequently done under cover of marriage, and in both cases it merely creates a presumption, which can be rebutted by the production of sufficient evidence.

It is an old maxim of English law that God, not man, makes the heir. In other words, the tenant for life cannot supplant the heir—*apparent*, except by the dangerous process of killing him. He cannot adopt an older child, and so put a stranger over his head. But he can and does supplant the heir—*presumptive* by the simple process of marrying his washerwoman, whereby the plans of the Deity may be somewhat modified, and the purity of the family blood considerably tarnished. Seeing, then, that persons with great expectations may be as easily disappointed by the process of matrimony as by any other, it does not seem that any great harm would be done them by allowing the tenant for life, when there was no heir-apparent, to nominate one by acknowledgment of paternity, without necessarily going through the form of marriage with the mother. It seems to me, therefore, that any person should be permitted to legitimate a child by either of two methods; that is to say, by publicly registering his willingness to admit the paternity of the unborn child of a certain woman,—and this is marriage,—or by publicly registering the fact that he is the father of a child already born and living; and this is adoption. With respect to this second method of legitimating children, since we ought to proceed cautiously, it might be provided that

the adopting person should be required to make a solemn declaration that, to the best of his knowledge and belief, he was actually the parent of the child in question. And the most complete form of adoption would be when both parents registered their parentage jointly, bringing the child with them.

To impose any limit of age on the child would be to defeat the object of this reform. But as a transitional step, pending the assimilation of real and personal property, it might be enacted that, for all purposes of inheritance, the adopted child's claim should date, not from his birth, but from his registration. This would safeguard the reasonable expectations of existing persons, as the Scotch law does now. In the absence of any living (born) person being heir-apparent at the time of his registration, the adopted should be treated in all respects as though he had been born in wedlock.

To sum up, the State is not really concerned with the kinship of citizens except for what may be called work-house purposes. That is to say, if a child is found, the State endeavours to find the mother, and having done so, helps her, if necessary, to indicate the father. The decision of the court on this point is based on probability, and very often in face of the denial of the person accused. It is an absurdly unjust and antiquated proceeding, and should be utterly abolished. In the meantime the State does not pretend that such a decision establishes any kinship whatever. It does not even make the child the son of the putative father. The child still remains *nullius filius* in the eye of the law, although the law has just asserted its knowledge of the father. The total effect of the decision is to render the most probable father of the child liable for its maintenance for the first thirteen years of its life, at a cost not exceeding a sum of about £150, in case of the mother's inability to contribute to the child's support. Otherwise the common law makes the mother wholly responsible for the child's support for the first sixteen years of its life. Whether the State is wise or foolish, right or wrong, in imputing paternity to a man against his will, and in spite of his denial, is a question into which we need not enter here. It is based, firstly, on the anti-Socialistic principle that the community should not be saddled with the support of new-born citizens; and secondly, on the principle that no child should be left to perish. There is a good deal to be said for each of these contentions; though both together may not be a sufficient justification for affiliation orders. I mention this subject merely because some persons seem to think that affiliation and legitimation have something in common, which they have not. It would indeed be a strange “reform” to rest the title to thirty thousand acres and an ancient name upon the bare opinion of a couple of justices in petty session, with no better safeguard against their stupidity or bias than an appeal to quarter-sessions. And yet this is what must be meant by making *all* children legitimate: though even this does not make clear what would be done in the case of children, alas! no inconsiderable number, of whose paternity not even the mother can hazard a guess. No, these unfortunates, together with those “chance children” whose existence we all recognise and deplore, must be content to remain fatherless, while others, foundlings and the like, must remain not only fatherless, but motherless. Neither law nor liberty can wring happiness out of vice.

It is easy to point out the flaws in the existing law, but it is difficult to suggest a reform which shall not injuriously affect the rights of innocent persons. My own views on this question are, I think, stated with tolerable clearness in my presidential

address at the Inaugural Meeting of the Legitimation League 1893, and therefore, without apology, I append it as it stands:—

I suppose I ought to begin by thanking you for the honour you have done me in asking me to be the first President of this Association. I confess my gratitude is somewhat tempered by the reflection that there is a certain amount of odium attached to the post. Otherwise very many better men might have been called upon and expected to fill this office. Only the other night—the night before last—a friend of mine, a member of Parliament, who is well known in this county, and represents one of its divisions, asked me, "Why will you have anything to do with so disreputable a movement?" I replied, "You have no right to describe the movement as disreputable until you know precisely what its aims and objects are." That brings us to the question—What are the aims and objects of the Legitimation League? It is highly improbable that we are all met here with precisely the same objects and aims. On the other hand, it is highly probable—more than probable—that there is something in common that we are all met here to advocate. I suppose that, broadly speaking, we may say that we are met here for the purpose of enabling certain classes of persons now described as illegitimate to become legitimate. That is perhaps the broadest way in which I can describe the objects of this meeting and this Association.

But before we can erect this very vague proposal into a working rule of action, we find we are compelled to ask ourselves several questions—three chief fundamental questions; and unless we can find an answer to these questions, upon which we can all agree, this Association is a house divided against itself, and it cannot stand. First of all, we have to ask ourselves what are those classes of persons upon whom we are proposing to confer the privileges—or if you prefer it, the rights of legitimation? The French law and the old Roman law conferred these rights or privileges upon all persons with the exception of those who were the offspring of an adulterous or incestuous union. Now we have to come to some conclusion as to whether we are prepared to accept this limitation. I offer no opinion myself at all as to adulterous unions, but with regard to incestuous unions, there is a very great deal to be said. In the first place, incest is not generally understood by the people. It includes, according to English law, unions within the prohibited degrees of affinity and consanguinity. We have first of all to settle the question whether we are prepared to accept unions within those prohibited degrees. The Greeks, in the very height of their civilisation, prohibited unions between a brother and a half-sister, but they permitted unions between a brother and sister, and the marriage of the celebrated Cimon is an instance. He is said to have married his own sister by his own father and mother. I only mention this as a case in point, but we must come to a settlement on this question before we can agree as to the alterations to be made in the law.

The next question is: What is the degree of right or privilege which legitimation is to confer? We must know what it is we propose to confer upon the illegitimate, by the process known as legitimation. Are we going to put illegitimate children on an equal footing in all respects with children born in wedlock? I don't say it is desirable or undesirable; but I do say that, according to the laws of various countries, lines have been drawn. What we have to do is to say what lines are to be drawn, and to ascertain what special privileges or rights are to be conferred upon children who are to be

legitimated? Having agreed first as to the class upon which the right is to be conferred, and secondly as to the nature and extent of that right, there is a third question, and this third question is the most important of all.

What is the procedure which we are to advocate whereby illegitimate children can be legitimated? That question underlies all other questions. It is the very question which we are met here to confer on and to decide. I may venture to remind you that, according to the English law, the only process of legitimating children is by the marriage of their parents before the birth of such children. That is the only possible process by which children, in this country, can be legitimated. Now in Scotland natural children can be legitimated *per subsequens matrimonium*, that is to say, by the marriage of their parents at any time whatever. There is a difference between these and the early Roman law—I mean the law of the Roman Republic as distinguished from that of the Roman Empire—when they were very much more strict. Under that law it was necessary that the marriage should take place, not only before the birth, but before the conception of the child. Here is a very considerable difference. According to the Scotch law, a child born before the marriage can be legitimated by the marriage of its parents after its birth; according to the early Roman law, no such legitimation could take place. But there was another process; there was the process of adoption, whereby any person whatever could become the legitimate son or daughter of the adoptive parents under certain legal forms. We might continue this inquiry very far; but we cannot go further than this: That it is possible we might introduce a law whereby children could become the legitimate children of the adopter by the mere registration of their adoption.

I mention these processes, but there are many others. There are two other modes known to French law. One is the process of adoption under the *Code Napoléon*, and the other the public acknowledgment of paternity. I submit we must come to some agreement as to what these processes must be before we can form a working association to carry them into effect. I would ask whether an association formed for the purpose of discussing these questions—of ascertaining what should be the proper laws relating to these matters—can properly and justly be described as a disreputable association? What does it imply? It implies first of all that the law of Scotland, which is admitted to be on very many points superior to our own, is disreputable. It implies that the law of France, the *Code Napoléon*, which is the intellectual offspring of one of the greatest jurists known to the modern world—Cambacérès—is disreputable. It implies that, our own excepted, the laws of all the civilised countries of the earth are disreputable, and deserving the condemnation and execration of the moral, worthy, and respectable English citizen. Nay more, it implies that the morality of, shall I say Mrs. Grundy, is superior to that of the Church at the very height of its intellectual development. For what do we find? We find that the principle of the Scotch law was established as part of the civil code by the Emperor Constantine, and was confirmed by the Emperor Justinian- and furthermore, that this principle was adopted by Pope Alexander the Third, about the middle of the twelfth century. When the bishops and clergy of this country struggled to introduce this principle of the Canon law into the English common law, it was rejected by the barons of England. They said—I don't wish to trouble you with the Latin, but I will quote what I may call a rough English translation—"The laws of England will never make any alterations which are opposed

to that which is usual and proper," a sentiment certainly worthy of a fossil Chinaman. We must never forget that the most unpopular reforms are those which every man in his heart believes to be desirable, but lacks the courage to advocate or to openly avow his belief in.

But there is a strong objection brought against our proposed reform, and it is an objection for which I have the very greatest respect. It is said that in this free country there is no reason why any illegitimate child should be left unprovided for. Any man in his senses can make his will, and it is a criminal offence—morally speaking—if he fail to make it under such circumstances. This is a very strong argument against forcing any new law upon us. It is true that any man can so devise his property that his illegitimate child shall not be unprovided for; but certain cases have come within my own observation, and must have come within the observation of almost every one in this room, in which that has not been done.

I know of one case in which a man died, leaving his property—he being a man of considerable means—to be equally divided among his children. After inquiries had been set on foot in connection with probate, it transpired that the eldest child of the union—and they were legitimately married—happened to have been born some weeks before the marriage. This was for private reasons into which it is not necessary to enter. However, the father and mother were of opinion that their subsequent marriage legitimated their first-born. It was a mistaken opinion, and they ought to have taken legal advice. The consequence was that the eldest child was left absolutely penniless and dependent on his brothers and sisters. More than that, he was left branded as a bastard, and thus handicapped in the struggle for existence. Another case which also came to my knowledge was of a different character. A man, whose wife unfortunately became an inmate of an asylum—a hopeless lunatic—had a child of whom he was particularly fond, by a woman with whom he cohabited as long as he lived. The man was, in the eyes of those who look on things from a rational point of view, leading a thoroughly moral life. He died and left all his property to this child. Meantime his original wife died in the lunatic asylum. By an accident the will was lost, at all events it was not found, and the result was, that the child, morally entitled to property worth between thirty and forty thousand pounds, was left a pauper. This is a state of things which, it seems to me, ought not to be tolerated by civilised law. Thirdly, there is the case—and a very common case indeed—of the children of a man who has chosen—I won't say to marry—but to go through the form of marriage with his deceased wife's sister. I know a case very intimately, because it happens to be that of a relative of my own. He is a man of no means beyond what he is entitled to under a settlement made by his own father. All his first wife's children are entitled to certain property. But his children by his deceased wife's sister come in for no share whatever. He himself would be willing to acknowledge these children just as he would the children of his first wife. But he is precluded by law, and he has no control whatever over the settlement. These are three cases in which the law does seem to affect the property of the illegitimate child. It is no use telling us these cases are rare. They may be rare, but they ought to be rarer. The fact that they are rare does not justify us in saying that we ought to tolerate them where they do exist. To say that a man has only to take the precaution of making a will and to see that it can be found in case of his death, is beside the mark.

But after all, the question with which we are now concerned is not so much a property question as a status question. It seems hard that innocent children should be branded with a lifelong brand of bastardy as the result of folly or impatience, or it may be weakness, over which they had no control. What we are endeavouring to do is so to alter the law that this stain should be removable from the escutcheon of these otherwise honourable citizens. That is our object. It may please God to visit the sins of the fathers on the children unto the third and fourth generation, but it is utterly unworthy of civilised men. What I mean to say, with all reverence, is that although nature may visit certain acts with certain definite consequences, it is not for us to accentuate or aggravate those consequences. If a child puts its finger into the fire and is burnt by the law of nature it is not for us to put a red-hot poker to its nose. It is not for civilised men to accentuate and aggravate the cruel results of nature's laws.

The next point is, what procedure should be adopted for the purpose of legitimating children? As to the injustice and immorality of branding the innocent, I need say no more, because we are met to confer as to the raising of a platform upon which we can further the interests of children who happen to be born out of wedlock. In order to ascertain what we ought to do, the best possible plan is to consider and take note of the historical development of this question. From the earliest times we find two modes of legitimating children—the process of adoption and the process of marriage. Of these two, the older is the process of adoption. As we sail down the stream of history we find that in the days of the Roman civilisation these two modes were both in full working order, and it is said that as many children were legitimated by adoption as by marriage. At any rate we do know that in the noblest days of Rome, its wisest and best of emperors, Nerva, Trajan, Hadrian, and Marcus Aurelius, all succeeded to the purple, not by birth, but by adoption. It is also well known to all of you that the process of adoption is absolutely unknown to the English or the Scotch law. It is well known to the French law, but, unfortunately, it is so hedged about by conditions and restrictions and limitations, that it is to all intents and purposes useless for the purpose of legitimating natural children. In the first place, no man can adopt a child in France unless he is fifty years of age, and without legitimate offspring. He cannot adopt a child unless that child is already twenty-one years of age. He must also prove that he has provided for the child during at least six years of its minority. There is an exception to this rule, in the case where an adopted child has saved its adoptive father from being killed in battle, or by drowning, or by fire. Thus the process of adoption is unsuited to the legitimation of natural children, and the consequence is that the French have to fall back on what is known as the public acknowledgment of illegitimate children.

In spite of recent legislation an illegitimate child has not yet equal rights with legitimate children, and, moreover, it cannot inherit from the kindred of the adoptive father. It comes in on fairer terms with the legitimate children so far as regards the father's own property, but not so far as regards property from kindred, as, for example, from an uncle or a grandfather.

We are none of us here to dogmatise, but to discuss the question amongst ourselves, and if possible to find out the best process of legitimating children. At the same time, I may venture to offer my own personal opinion on the subject. I don't believe in the

French process of publicly acknowledging illegitimate children, for the reason that although it does provide for them to a certain extent, it fails to remove from them the stigma of bastardy, and fails to put them on an equal footing with the legitimate offspring. I have a copy of the *Code Napoléon* here if any one wants to look at it. According to this *Code*, if there should be any legitimate children, the illegitimate child comes in for one-third of what he would have got had he been legitimate; if there are no legitimate children, he comes in for one-half; and if there be no kindred within the degrees capable of succeeding, he comes in for the whole. is may be called legitimation, but it is only inaudible of qualified legitimation—it places the child on a different footing. Now, I would say the proper course to adopt—the course which will certainly be adopted in the future, when we are a little wiser than now—would be to revive the ancient process of adoption, but without any of the restrictions imposed by the ancient law of Rome, or the very highly civilised law of France. I think it was Justinian who said "adoption should follow nature, and it seems unnatural that a son should be older than his father." But, at the same time, the danger of a man adopting as his son one who is older than himself is very remote, and if he did so, no very great national calamity would ensue. If any strong-minded young man chooses to adopt his grandmother I see no particular reason for his not doing so. He can practically do so now if he likes; that is to say, he can leave the whole of his property to her, and if it should be that she were a bastard, there is no reason why he should not thus wipe out the stain attaching to her name. In the future you will find that adoption will be a legalised institution in this country, in so far that a person may adopt any one he chooses, provided the adopter be of full age. That is the only restriction I should be inclined to make. Claudius, the enemy of Cicero, was adopted by a man younger than himself, in order to enable him to become a Tribune of the people, and no evil results that I ever heard of came from it. Further, if the custom became legalised in this country we shall all agree it would be mainly used for the purpose of legitimating natural children. The question then arises, What would be the effect on the distribution of wealth in this country? I unhesitatingly say there would be no effect whatever, with two exceptions. The first is the case of intestacy. I have already mentioned a case where what should have been the property of the illegitimate child passed to the father's next of kin. I regret to say they absorbed the whole of it, with the exception of just enough to keep the child off the rates. Our object is to substitute justice for injustice. There is another probable result of this change in the law, if it were made at once. In the present state of real property law it would enable a tenant for life to divert the succession, and this would be a real injustice to the heir. So long as real property law and the law of personal property remain antagonistic, I think it would be desirable to adopt the principle of Scotch law in the case of marriage after birth. I will give you an instance which will make this clear. Suppose a man has a natural child, and he afterwards marries and has lawful children; the wife dies, and eventually he marries the mother of his illegitimate child. in such case that child becomes legitimate and is on the same footing as other children, with one qualification, and that qualification we ought to consider. The legitimacy dates not from the date of the child's birth, but from the date of the marriage of its parents. Therefore the heir born in lawful wedlock is not cut out by the subsequent marriage of the father with the mother of his illegitimate child. This rule would be desirable so long as real property law is not assimilated with the law of personal property. Those days are not far distant. We are not here to discuss this question, nor are we here to

discuss the relation of the sexes. We are met here to discover the best means to enable honourable men and women to remove a stain from the escutcheon of honourable children, and to raise them to the same level as those born in lawful wedlock. That is our aim; we have no other. In spite of misrepresentation, I think we may put our shoulders to the wheel, and having regard to the moral intention of the League, confidently go forward and do good work. We have difficulties, real logical difficulties to overcome in regard to the legal aspects of the question, and many other obstacles to encounter in the shape of old prejudices, and of what I may venture to call fossil Toryism.

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CHAPTER VIII

The Future Of Labour

It is now twelve years since I published what I may call a theory of industrial evolution in which I endeavoured to predict the future of the labour bond. Six years ago I embodied the thing in a little book entitled *Labour Capitalisation*, and I have ever since been assailed (especially by individualists) as the patentee of a quack pill for the cure of poverty. This is a complete misunderstanding of my position. I do not *propose* anything. I advocate no system, I have been told that my system wouldn't work, that it is all very fine in theory, and so forth. I don't know whether it would work or not. I might almost say I don't care. For the purposes of my argument it does not signify whether it would be a failure or not if put into practice to-day. It has been pointed out to me that it would not extirpate poverty. I know it would not. Of course it could not, any more than Socialism or Malthusianism or any other scheme for counteracting the laws of nature. I have been told that it cannot permanently raise the price or reward of labour, such as it is. I know that. The average value of the labourer is the cost of his production, and you can only raise his price in the same ways as you can raise the price of other elements of production. There are several ways. You can diminish the supply, or you can increase the demand at his present productiveness; or, thirdly, you can increase his productiveness. But any attempt to raise the price of labourers (that is, to enlarge their share of the produce) without increasing their productiveness, compared with other elements of production, is clearly foredoomed to failure. The notion is absurd and opposed to the first principles of economic science.

All I have done is this: I have carefully studied the history of industrialism; I have observed the tendencies operating throughout the past and still operating at the present time; and I have tried to show what the eventual outcome of these tendencies must be in the future. Whether that future is near or remote I cannot tell. Whether we are now ripe for the industrial *régime* of the future (as I foresee it) I do not know. All I profess to know for certain is that short of a cataclysm nothing can happen to prevent the adoption of the system of labour capitalisation by civilised peoples sooner or later. It is as certain to result from existing observed tendencies as any celestial phenomenon which an astronomer predicts as the necessary effect of observed movements. I no more propose a new arrangement as a cure for present ills than a meteorologist proposes a hot summer as a cure for the effects of a late spring. I merely predict that which I foresee. If you ask me whether we in this country are yet ripe for labour capitalisation, I answer that it does not affect the theory. It is a practical question which practical men must answer either by guesswork or by experiment. My humble opinion is that in some industries we are ripe for it, in others not. I believe it might be introduced with success in the large factories, the mines, the foundries, and other industrial laboratories now worked on a large scale with numerous manual labourers. It would not work, I incline to think, at present in small retail establishments. Social arrangements are not transformed *per saltum* or all along the line. Slavery is still a natural and beneficent industrial system among some peoples; and even among

civilised races it was centuries in dying out and giving place to Wagedom. In its turn Wagedom will not give place to Capitalisation between some Monday and Tuesday. Neither will it be brought about by a short Act of Parliament.

But I have not yet stated precisely what I mean by Capitalisation of Labour. In order to do this clearly I must ask to be allowed to give very briefly my own view of wealth production.

I discard as utterly worthless all the orthodox technical economic terms. The absurd division of wealth into three classes—*land, capital*, and *labour*—seems to me not only arbitrary and useless but mischievous.

Wealth is all that which is useful, that is pleasing to man. To the extent that its kinds are limited there exist infinite gradations of value, from the very valuable to the absolutely valueless. Valuable wealth may be roughly divided into two classes—that which is directly or immediately useful (pleasure-giving), and that which is *directly* or mediately useful.

We all enjoy plum-pudding (or ought to), but no one enjoys a screw-driver or a tie-rod.

These latter have value, because by combining them with other kinds of wealth we obtain a product which is more valuable than the elements from which it is created.

Now I define capital as those kinds of wealth the value of which is due to the demand for them as elements of production.

Thus large diamonds are useful for glass-cutting, but their value is absolutely independent of this fact; therefore they are not capital. Conversely, iron-ore is enjoyable not immediately, but only after passing through the industrial crucible; therefore it is capital. Coal is immediately enjoyable, but its value in this country is affected and determined by the demand for it as an element of production; therefore it is capital. Consequently, land and labourers are both capital. It makes no matter what we call them;—they *are* capital. The whole system of wealth production consists of putting things, as it were, into a crucible with such prudence that the resulting compound is worth more than the sum of all the elements employed. The increment is called profit. To talk of abolishing profits is sheer nonsense. If profits were not expected no one would be so foolish as to throw wealth into the melting-pot.

Now, all valuable wealth is appropriated—*belongs* to somebody. The mere statement that it is valuable means that some people want it but lack it, and are willing to make a sacrifice to obtain it.

The first question that arises, when the product results from the combination, is, To whom does it belong? For some of the wealth may have belonged to one person and some to another. The answer given by history and by justice and common-sense is, It belongs to those who put the elements in, and exactly in proportion to the value contributed by each. But some of the wealth has been totally destroyed, consumed in the process, for example the coal and the limestone. Some is not consumed wholly,

for example the furnace and the workers. They are only impaired. They are worth less because they are nearer the time when they will be worth nothing at all. They wear out. In the case of these things an actuarial computation is roughly, perhaps unconsciously, made. It is customary to reckon so much of them as destroyed. Ten per cent per annum is usually written off for wear and tear of machinery, that is, one-tenth is regarded as used up. If machinery was never worn out or broken, or lost or stolen, only economic rent could be obtained for the loan of it. Now, labourers are, economically speaking, machines; whoever casts them into the crucible, taking all the risks, should logically receive a share of the gross product proportional to their prior value, just as the owners of the horses and machinery do.

When slave-owners invest their slaves in an adventure, their share of the profits or losses (*i.e.* of the gross product) is so calculated. How is it that the same arrangement is not made when the workers own themselves. The system in vogue is Wagedom.

The reason is plain. The workers, instead of casting themselves into the crucible, prefer to dispose temporarily of the property in their own bodies to others during the process, in order to evade the risk of loss. Others cast them in, and to others rightfully belongs the gain or loss resulting from the combination.

Seeing that on the average of all the combinations in this country a gain is made (about 3 per cent), instead of a loss, it is clear that by the wage system the workers forfeit the profit. This loss of average profit (or economic interest) on the value of the workers (say £375,000,000 a year) is not the only deplorable result of wagedom. I propose to show some of the other direct or indirect evils of the system; to point out some of the remedies which have been proposed; the good results obtained by them; the evils resulting, or which necessarily would result; and finally, the probable effects of the capitalisation of labour.

By capitalisation of labour I mean the system under which the workers invest themselves (their labour) on the same terms as other capitalists,—namely, a proportionate share of the product,—be it profit or loss. But they cannot afford the loss, if any? Then let them insure themselves on a definite basis, instead of paying as a premium an indefinite sum varying with the success of the undertaking. But it would cost as much to do it the other way? I deny it. And if it did, the results to be shown would be unaffected. Their profits would for many reasons be far larger. And then the premium would fall. But wages must be advanced, you say. Yes, wages perhaps, but not necessarily the reward of labour. I have been asked how the system could be started. Well, I have nothing to do with that. I am told that no one knows the present market value of a free labourer. Very likely. I have suggested that, in order to make a beginning, it might suffice to strike an average of the last seven years in some large concern, and ascertain what proportion of the gross returns of the business had been paid over in wages. Suppose 30 per cent. It might be inaudible it might be 80. A bargain might then be made between the existing staff of workers and the so-called employers, to hand over such share of the value of the product to the workers at the end of three months, or at any other convenient stock-taking.

Mr. Moffat urges (and I value his opinion more highly than that of most other political economists, because he is always thorough and logical) that this ratio also ought not to be fixed, but should vary by competition. Quite so. I admit it. I merely suggested this arrangement as a convenient one to start with. At the instance of either party, after a single process, or several processes, a revaluation could be made, such as now takes place among working and sleeping partners.

I have not the smallest doubt but that the workers' share would steadily rise. But whether their *share* rose or not, it is abundantly clear that their gross takings would rise considerably for the following reasons:—

> 1st.When industry is made coincident with self-interest every man naturally does as *much* work as he can: he no longer aims at getting as much pay as he can for as little work. It ceases to be his interest to shirk.
> *2nd*.He will do his work as *well* as he can. He will not as now aim at appearance only, and so scamp his work, because he will know that his reward depends on the value—the quality of the work he turns out.
> *3rd*.His aim will not be to work as *long* as he can, but only to do as much good work as he economically can. The employer is no judge of slight differences in his men; he is obliged to be satisfied with making them one and all stand over their work for as many hours as the average are found capable of doing without breaking down.
> *4th*.This entails overlooking, and overlooking is paid for out of wages. It is part of the cost of the labour element. This would all be saved. The men would overlook one another.
> *5th*.All need for strikes would disappear. When trade is good, and gross returns are high, the receipts of the manual workers would be proportionately high. There would be no need for readjustment by rule of thumb. Again, when prices go down the masters will no longer be forced to call their workpeople together and propose a reduction of wages, for the receipts of the hands will fall of themselves. The loss and waste of force entailed by strikes is incalculable.
> *6th*.When, in any particular trade, profits are low, those who are best qualified to earn a living at some other occupation will go of their own accord, and those who are least qualified will remain. At present in such cases employers dare not “sack” a considerable number of their workpeople, for fear of their own credit, till the inevitable hour comes; and then the ranks of the unemployed are suddenly swelled by the whole lot. One of the incidental results of this automatic action will be a temporary limitation of output, a result not undesirable at such times.
> *7th*.A great moral effect will be produced. The working classes will learn providence and thrift by experience, as others have learnt it. Fluctuating incomes do more to encourage thrift than much preaching.

Let us now examine some of the proposed remedies for admitted evils.

Trade - unionism aims at raising the price of labour by diminishing the supply: not by restricting the number of workers, but by binding them together not to sell their services for less than what is deemed a reasonable price.

In order to attain this result, clearly all the world must be brought into the Union. If all the workers refused, say, to work more than four hours a day, the price of labour would at first be nearly doubled; and moreover, the cost of the production of labourers would remain the same; so that wages would not fall. But the effect on prices would be followed by a diminished demand for labour; and this would be followed by the slow starvation of some of the workers—unless they broke the pact. Would they?

Malthusianism also aims likewise at raising the price of labour, but by limiting the supply. Here, again, we must leave foreign competition on one side (which we have no right to do); and then we may admit that the effect would be to raise the cost of the labour supply; and thereby to raise the price of labour. But how are we to begin? Preaching converts the best. Then the inefficient increase and multiply, and fill up the vacuum; and the only effect is the steady deterioration of the breed. Moreover, we cannot afford to dispense with the great spur to industry—necessity.

Religion would possibly suffice, if the majority could be firmly convinced that their temporal comfort was a thing of little moment. But its influence seems to be on the decline.

Thrift has been preached by some; under which head we may include abstention from unprofitable luxuries like alcohol and tobacco and expensive dress, and also early marriage. But the effect of this, though beneficial to the individual practising the virtue, cannot affect the class, except to make it a better instrument of production at a reduced cost. It could not raise the reward of labourers all along the line, and it certainly would lower the reward of labour *ad valorem*.

Emigration means the removal of the surplus population. The effect here again would be the raising of wages by the reduction of the supply of labourers. But if it is left to the workers themselves it is clear that the country loses its best blood, and the worse remains behind. If the State exports the inferior, we require an impossible exercise of selection, and what is more, we eventually injure the Anglo - Saxon race abroad. Moreover, a little arithmetical calculation will show that one might as well try to empty the sea with a teaspoon.

Neo-Radicalism perhaps hardly deserves mention. It is a jumble of “dodges”; it talks liberty and practises despotism, and it ignores all the indirect consequences of its acts.

Profit - sharing is a system under which the lawful owner of profits gives up a certain share of such profits by way of bribes to his workpeople, to induce them to work harder. The objection to it is that, if carried out as a general practice, it would necessarily lower wages, till wages and bonus together equalled the old and normal wage.

Co-operation is a reaction from wagedom, and it swings to an equally absurd length in the opposite direction. Wagedom says all the profits properly belong to the capitalist. Co-operation says none of the profits properly belong to the capitalist. But inasmuch as Capital cannot be got to co-operate on that understanding, co-operationists aim at scraping together the savings of the workers themselves and treating them as loans.

The Sliding Scale is another recognition of the doctrine that somehow or other wages ought to vary with profits; but it is a mischievous arrangement; for by making wages vary with the price of output per unit, it tends to discourage production. That is to say, it is the interest of the workers to keep up the price of the article produced rather than to produce a great deal at a lower price.

Lastly, we come to *Labour Capitalisation*. What are the objections to it? and are they insuperable? They are fairly and clearly summed up in a letter which I received from the late Lord Derby:—

Knowslky, Prescot.

The difficulty of profit-sharing (though I think experiments in that direction well worth trying) seems to me practically this—that working men are quite willing to share profits, but not to share losses; and also that if they are to be paid by results, they will naturally claim a voice in the management, which in many branches of business, at least, it would not be easy to give them.

I am not sure that on a first reading I have clearly made out how the system which you propose differs from that of profit-sharing which you condemn. I dare say a second and more deliberate examination will clear up the difficulty. I think also that you underrate the importance which the majority of men in all classes attach to a fixed rather than a fluctuating income. But this is a matter of opinion in regard to which proof is impossible.

Your leading idea—the inexpediency of continually calling in the State to interfere between man and man—is one which I am personally disposed to accept, but you will never get a democracy, newly possessed of power, to accept it. They will, at any rate, try what their voting power can do to improve their condition, and nothing but experience will teach them what legislation can accomplish and what it cannot

Derby.

It is not difficult to show that the difference between capitalisation and profit - sharing (in its usual and technical sense) is very considerable. Profit-sharing is based on wagedom, and the share of profit allotted to the workman is not calculated on any principle. Nor is his claim to such share recognised as a right. It is merely contended that if the employer will *give* the workers a share (any share found sufficient for the purpose) of the -net profits, it will operate as a bribe or stimulus to work harder and better, and the result will be that the gross returns will be so much increased as to more than recoup the employer for his generosity.

The capitalisation system, on the other hand, recognises the *right* of the worker to a share, and a very definite share, of the gross returns of the undertaking. Nor is it based on the wage system. It proceeds on the principle that the labourer has an ascertainable value, that he is his own capital, and that he should put himself into the venture on precisely the same terms as other investors of capital demand. In proportion to the original value of the capital contributed by each, the gross returns should be divided. A contributes an acre of land, B a steam-plough, C a team of horses, D his own self. The acre is worth £60, the plough worth £80, the horses worth £120, and the labourer £600. Let the gross total be worth £946 at the end of a year. There is the acre, the plough (10 per cent the worse for wear), the horses (a year older and worth less), and the labourer also a year older, and there is the net produce of the year's work, worth £86. How should this £86 be divided? Neglecting differential wear and tear, the owner of the acre would take £6, the plough-owner would take £8, the owner of the horses would take £12, and the labourer would take £60. But, it will be said, surely this is a very disproportionate share for the labourer? No, at present instead of receiving it at the end of the venture, it is mostly doled out to him by the other contributors during the process. And it is reckoned by them as part of their outlay. And so it is. What they do is this; they buy the labourer for the year (borrow him, or hire him) as a speculation. Then they invest him as their property—not his own. Hence any profits on the venture are fairly theirs, not his. This is the system of wagedom. Now there is no conceivable reason why the labourer should not invest himself, and retain the property in his own body. He will then be entitled, of course, to the profit (or loss) on the investment.

And how is he going to live in the meantime? The capitalisationist's answer to this question is, Leave that to him. If it is necessary to have an office whose function it is to advance the means of subsistence, to eliminate risks, and to ensure an average return to the worker for his work, that is not the business of the contributor of other kinds of capital. It is a separate function, and one, moreover, which is most injurious to the community. We argue that the time is at hand when this function should altogether cease. Of course, those (no matter who they are) who take the risk of the labourer's investment, and guarantee a return, cannot, under the best conditions, do this without charging a commission. The labourer must pay the premium just as he does when he insures his life. And the premium paid is precisely the net profit on his capital (himself). Consequently all he receives is the fuel which keeps him going, and a small sum for a sinking fund to rear up a substitute when he is worn out. He voluntarily forgoes his profits.

In exchange for this sacrifice it is true that he is guaranteed against loss, and thereby enabled to go on living. He does not gain, but he does not lose. He works for nothing; he has as much after a year's work as he had before, namely himself; but he has resisted the forces of disintegration all the time, and that is something. Hence, as Lord Derby says, the majority of working men are not anxious to run any risk of having to share losses. Of course no capitalisationist pretends (as profit-sharers do) that the labourer should stand to share profits without at the same time standing to share losses. It is not contended that at present the working classes are all ripe for the change. It is believed that the “aristocracy of labour” is ready to assume the responsibility of self-investment, and that eventually the great body of workpeople

will follow their lead. By taking care of their own earnings, and by exercising discretion in investing their capital (their own selves), they will get rid of the middleman, who at present lives on their shiftless irresponsibility. They will thus take the profits they have fairly earned, instead of paying them to anybody who will kindly guarantee to keep them alive and fat enough for all practical purposes, and save them the trouble of thinking how they shall invest themselves.

Of course, there are many difficulties to overcome before the old order can give place to the new, and one of the most important is pointed out in Lord Derby's letter. The workers will not consent to invest themselves in an undertaking in which they have no voice. But it is probable that they will be satisfied with a representative voice. And who shall say that the labourers' delegate to the Council will not be welcome? The tendency observable in the course of industrial evolution is in the direction of larger and richer partnerships. Joint-stock companies are increasing, and will continue to increase. No greater element of stability on the managing board can be found than the chosen representative of those whose lives depend on the permanently successful management of the business. But in case one partner wished to reserve to himself full control of the management, it could be done just as easily as it is done now in the case of employer partnerships, where one man puts capital into a concern to be arbitrarily managed by another. The terms of the contract differ, that is all.

Partnerships are almost invariably the *result* of competition. The competition comes first, and when the partnership is an accomplished fact the competition ceases, as between the partners. That is precisely the position aimed at by labour capitalisationists. It is quite true that wage-receivers have no claim whatever, legal or moral, to a share of the profits on the employer's capital. It is this which distinguishes capitalisation from profit-sharing. In the former system, the labourer shares nothing that does not belong to him. By competition alone his value is assessed *before* the industrial operation. He then takes precisely that share of the gross returns of the venture which his own original and agreed-on value bore to the rest of the capital employed. Could anything be juster?. The fact that a large number of manual labourers require the means of subsistence to be advanced to them is not necessarily any business of the “employer” (contributor of other kinds of capital). True, he undertakes that function now, but that is exactly what I deprecate. It is not the function of either a speculator or a superintendent. It is added to these.

The main advantage of the new system is to hold out an inducement to the superior workers to do something more than is absolutely necessary to keep themselves alive and rear a substitute—something more than is required to “keep the place,” and avoid “getting the sack.” Under the system of wagedom there is no identity of interest whatever between those who supply labour and those who supply other elements of production. Once the labourer is hired he ceases to care two straws whether his work is productive or remunerative or useful. So long as he gets his “screw” he is satisfied. The harder he works the more he raises the standard of expectation and lowers wages. He is a fool to do more than is necessary to ensure re-engagement. It is the same with respect to quality of workmanship. When Mr. Moffat says, “The *natural* relation between the capitalist and the labourer is one of exchange or barter, not of partnership,” one can find but one fault with the statement. It is the *actual* relation, but

not necessarily and always the *natural* relation. In the days of slavery it would have been quite as accurate to say that the natural relation between master and workman was one of coercion. The slave did what he was compelled to do, and received in exchange just what his employer thought fit. It was a natural arrangement, no doubt, in a sense, but it has mostly passed away. So will wagedom. It is merely a question of time; but the sooner the true tendency is recognised, the better for all. It is easier to make progress when the goal is in sight.

In the process of capitalisation (as Mr. Moffat points out), the improving partner is likely to be under-valued at the outset. This is the case at present, as he admits. It always will be the case. Perhaps it is one of the compensating advantages of old age. We weigh men by their past achievements, and not by their promises. But then, Mr. Moffat forgets that these labour partnerships are not permanent, and that readjustments will be made from time to time if necessary. Such readjustments will rarely be needed. In any case, they will compare favourably with the jerky and endless readjustments brought about under the wage system by means of strikes and arbitrations and lock-outs. There is now absolutely no basis of settlement. Even the arbitrators have nothing to guide them but "reasonable expectations."

Unless we accept the principle of labour capitalisation, the only alternative to this state of eternal tugging seems to be a system of State interference—factory legislation, State-regulated hours of labour, bank holidays, compulsory insurance, and the like; and it is a clear public gain when statesmen of well-earned authority put on record their personal conviction that, although State socialism is growing, and likely to grow, still in the end experience, and experience *alone*, will teach the newly enfranchised—especially the manual workers—that legislation can do little for their own, or for any other class, beyond ensuring for all a fair field and no favour.

The theory of labour capitalisation is based on the doctrine propounded by Adam Smith, but not adhered to by him throughout his writings, that the labourer is a species of capital. That being so, it is further contended that the proper remuneration of the labourer is such proportion of the profits of the work on which he has been engaged, as he himself bore to the whole of the capital employed—before the operation. This clearly necessitates the capitalisation of the workman. The free worker has a capital value not more difficult to ascertain than the capital value of any other element of production which is not sold outright, but which is hired or rented by time. The slave was sold outright, and his value was calculated on the basis of his average profitableness as revealed by experience. To say that "labour" is a species of capital which cannot directly support the labourer—as Mr. Moffat says[1] —may be quite true, but it is quite irrelevant. Most kinds of capital must be exchanged for other kinds before they can be put to that particular use. "Mr. Donisthorpe seems to think that his theory is wholly inconsistent with the Ricardian doctrine of the tendency of wages to a minimum," says Mr. Moffat; but surely this is a gross misconception of my position. On the contrary, the need for capitalisation is based upon this very doctrine. Ricardo's theory is stubbornly true so far as "wages" are concerned, and it is for this reason that wagedom is condemned and capitalisation put forward in its place. According to this system, profits and labour remuneration would rise and fall together, and in proportion. And it is the latter circumstance which Mr. Moffat deprecates. "In so far

as the movement of profit and wages in the same direction is concerned, Mr. Donisthorpe's observation is simply the observation of a common every-day fact; in as far as the establishment of a *definite* ratio is concerned, it is not justified by fact—it is the reform proposed by Mr. Donisthorpe himself; but the assumption does not hold good that the facts afford any preliminary justification of it." This is perfectly true. Under the wage system the facts could not afford any such definite indication. But, asks Mr. Moffat, "Why should labourers receive a fixed proportion of gross profits?" "Whence does Mr. Donisthorpe propose to get his proportion? Precisely from wages paid by competition. But if these wages are just, what is the need of change?" Now, this is the key to the objection of political economists to the capitalisation scheme. But it seems to be overlooked that this method of capitalising the workers is put forward merely as a temporary basis in order to gain foothold for a start. It is neither asserted nor denied that wages are already just; but it is held that, although the new system may possibly start on an unjust basis, such is the excellence of the system itself that it will work out its own salvation. At present it is impossible to say what is the capital value of an unskilled labourer; still less of a skilled labourer. Experience alone can teach. And even if we knew the past value (under the wage system) we could not predict the value under a system of freedom. When industry and self-interest are pulling together, who shall tell how much more valuable the worker will be? When Mr. Moffat says, "Competition is to be slain and buried, but its ghost is to preside over the scene for evermore," he again mistakes the issue. No capitalisationist wishes to see competition slain and buried, or even wounded and weakened. It is the very soul of progress. All he asks is that the worker shall cease to sell himself by time for any kind of work, with his eyes shut, to any employer who chooses to engage him; and that he shall in future be responsible for the work at which he labours. He shall enter into an undertaking with his eyes open and with full responsibility. -If the work is a failure, he will suffer; if a success, he will gain. At present the worker may go into the service of a man who proposes to make a fortune by converting roast-beef into manure, or he may engage himself to a cotton-spinner, and in cither case he takes his fixed wages. What does the success of the undertaking matter to him? And what inducement has he to work beyond the wish to keep his place?

Probably Mr. Moffat hits the nail on the head when he says, "Mr. Donisthorpe also forgets that his labourers will have vested interests." This is true, and it is one of the formidablest obstacles to the introduction of the system. It is one, however, which is daily weakening as an objection. Indeed, what are called equitable interests are being steadily multiplied. Certainly, workers who have contributed to bring a business up to a flourishing condition will never submit to be arbitrarily dismissed by an employer-that is, by the contributor of the other forms of capital. And, consequently, some contract in restraint of arbitrary discharge will have to be entered into. But why not? No employer cares to get rid of workpeople without just cause. The bare admission that the system would tend to confer a vested interest on the worker is hardly one which is calculated to make it unpopular.

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CHAPTER IX

The Woes Of A Politician

That barrel-organ outside my window goes near to driving me mad (I mean madder than I was before). What am I to do? I cannot ask the State, as embodied in the person of a blue-coated gentleman at the corner, to move him on; because I have given notice that I intend to move on the said blue-coated gentleman himself. In other words, I have given the State notice to quit. Ask the organ - grinder politely to carry his melody elsewhere? I have tried that, but he only executes a double-shuffle and puts out his tongue. Ought I to rush out and punch his head? But, firstly, that might be looked upon as an invasion of his personal liberty; and, secondly, he might punch mine; and the last state of this man would be worse than the first. Ought I to move out of the way myself? But I cannot conveniently take my house with me, or even my library. I tried another plan. I took out my cornet, and, standing by his side, executed a series of cadences that would have moved the bowels of Cerberus. The only effect produced was a polite note from a neighbour (whom I respect) begging me to postpone my solo, as it interfered with the pleasing harmonies of the organ. Now Fate forbid that I should curtail the happiness of an esteemed fellow-streetsman. What then was I to do? I put on my hat and sallied forth into the square with a heavy heart full of the difficulties of my individualist creed. The first person I met was a tramp, who accosted me and exposed a tongue white with cancer,—whether real or artificial I do not know. It nearly made me sick, and I really do not think that persons ought to go about exposing disgusting objects with a view to gain. I did not hand him the expected penny, but I briefly—very briefly—expressed the hope that an infinite being would be pleased to consign him to infinite torture, and passed on. I wandered through street after street, all full of houses painted in different shades of custard-colour, toned with London fog, and all just sufficiently like one another to make one wish that they were either quite alike or very different. And I wondered whether something might not be done to compel all the owners to paint at the same time and with the same tints. At last I reached a place where the road was rendered impassable by a crowd which had gathered to listen to an orator who was shouting from an inverted tub. He was explaining that many years ago Jesus died to save sinners like us, and therefore the best thing we could do was to deprive the publicans of their licenses without compensation. I ventured to remark that, although this might be perfectly true, still I wanted to get into the country along the common highway, and that the crowd he had collected prevented me from doing so. He replied that he knew my sort, whatever that may mean; but his words seemed to act like magic on his hearers, for, although I did at last elbow my way through the throng, it was not without damage to the afore-mentioned hat.

It was a relief to reach the country and to sit down by a stream and watch the children gathering blackberries. I was, however, surprised to find that the berries were still pink and far from ripe. “Why don't you wait till they are ripe?” I asked. “Coz if we did there would be none left by then,” was the somewhat puzzling reply. “But surely,

if you *all* agreed to wait, it could be managed," I said. "Oh yes, sir," responded a little girl, with a pitying laugh at my simplicity, "but the others always come and gather them *just before* they are ripe." I don't quite know who the others are, but surely something ought to be done to put a stop to this extravagant haste and ruinous competition. The result of the present system is that nobody gets any ripe blackberries. I mentioned the subject to an old gentleman who was fishing in the rivulet. "Exactly so," said he, "it is just the same with fish. You see there is a close season for salmon and some sorts; but those scoundrels are steadily destroying the rest by catching the immature fish, instead of waiting till they are fit for anything. I suppose they think that they will not have the luck to catch them again, and that a sprat in hand is worth a herring in a bush." I admitted the force and beauty of the metaphor, and proceeded on my journey.

Beginning to feel hungry, I made tracks for the nearest village, where I knew I should find an inn. A few hundred yards from the houses I observed a party of hulking fellows stripping on the bank with a view to a plunge and a swim. It struck me they were rather close to the road, but I nevertheless thought it my duty to resent the interference of a policeman who appeared on the scene and rather roughly ordered the fellows off. "I suppose," said I, that free citizens have a right to wash in a free stream.'1 But the representative of law and order fixed upon me a pair of boiled eyes, and, without trusting his tongue, pointed to a black board stuck on a post some little way off. I guessed his meaning and went on. When I reached the inn, I ordered a chop and potatoes and a pint of bitter, and was surprised to find that some other persons were served before me, although they had come in later. Presently I observed one of them in the act of tipping the waiter. "Excuse me, sir," said I, "but that is not fair; you are bribing that man to give you an undue share of attention. I presume you also tip porters at a railway station, and perhaps custom-house officers?" "Of course I do; what's that to you? Mind your own business," was the reply I received. I had evidently made myself unpopular with these gentlemen. One of them was chewing a quid and spitting about the floor. One was walking up and down the room in a pair of creaking boots, and taking snuff the while; and a third was voraciously tackling a steak, and removing lumps of gristle from his mouth to his plate in the palm of his hand. After each gulp of porter, he seemed to take a positive pride in yielding to the influences of flatulence in a series of reports which might have raised Lazarus. My own rations appeared at last, and I congratulated myself that, by ago the delay, I had been spared the torture of feeding in company with Æolus, who was already busy with the toothpick, when to my dismay he produced a small black clay pipe and proceeded to stuff it with black shag. "There is, I believe, a smoking-room in the house," I remarked deprecatingly; "otherwise I would not ask you to allow me to finish my chop before lighting your pipe here; don't you think tobacco rather spoils one's appetite?" I thought I had spoken politely, but all the answer I got was this, "Look 'ere, governor, if this 'ere shanty ain't good enough for the like of you, you'd better walk on to the Star and Garter." And, awaiting my reply with an expression of mingled contempt and defiance, he proceeded to emphasise his argument by boisterously coughing across the table without so much as raising his hand. I am not particularly squeamish, but I draw the line at victuals that have been coughed over. To all practical purposes, my lunch was gone, -stolen. I looked round for sympathy, but the feeling of the company was clearly against me. The gentleman in the creaking

boots laughed, and, walking up to the table, laid his hand upon it in the manner of an orator in labour. He paused to marshal his thoughts, and I had an opportunity of observing him with several senses at once. His nails were in deep mourning, his clothes reeked of stale tobacco and perspiration, and his breath of onions and beer. His face was broad and rubicund, but not ill-featured, and his expression bore the stamp of honesty and independence. No one could mistake him for other than he was,—a sturdy British farmer. After about half a minute's incubation, his ideas found utterance. “I'll tell you what it is, sir,” he said, “I don't know who you are, but this is a free country, and it's market day an' all.” I could not well dispute any of these propositions, and, inasmuch as they appeared to be conclusive to the minds of the company, my position was a difficult one. “I do not question your rights, friend,” I ventured to say at last, “but I think a little consideration for other people's feelings … eh?” “Folks shouldn't have feelings that isn't usual and proper, and if they has, they should go where their feelings is usual and proper, that's me,” was the reply; and it is not without philosophy. The same idea had already dimly shimmered in my own mind; besides, was I not an individualist? “You are right, friend,” said I, “so I will wish you good morning and betake myself elsewhere.” “Good morning,” said the farmer, offering his hand, and “Good riddance,” added the gentleman with the toothpick.

As I emerged from the inn, not a little crestfallen, a cat shot across the road followed by a yelping terrier, who in his turn was urged on by two rosy little boys. “Stop that game,” I shouted, “what harm has pussy done you?” The lads did stop, but the merry twinkle in their eyes betokened a fixed intention to renew the sport as soon as old Marplot was out of the way. But the incident was not thrown away on a pale man with a long black coat and a visage to match. “It is of no use, my dear sir,” said he, shaking his head and smiling dreamily, “it is the nature of the dog to worry cats; and it is the nature of the boys to urge on the dog; we are all born in sin and the children of wrath. I used to enjoy cat-hunts myself before I was born again. You must educate, sir, educate before you can reform. Mark my words, sir, the school board is the ladder to the skies.” “The school board!” I ejaculated, “you do not mean to say you approve of State-regulated education? May I ask whether you also approve of a State religion,—a State church?” I thought this was a poser, but I was mistaken. “The two things are not in *pan materia*” replied the dissenting minister (for there was no mistaking his species); “the established church is the upas tree which poisons the whole forest. It was planted by the hand of a deluded aristocracy. The school board was planted by the people.” “I do not see that it much signifies who planted the tree, so long as it is planted; but, avoiding metaphor, the point is this,” said I emphatically: “is one fraction of the population to dictate to the other fraction what they are to believe, what they are to learn, what they are to do? And I do not care whether the dictating fraction is the minority or the majority. The principle is the same,—despotism.” The man of God started. “What!” he cried, “are we to have no laws? Is every man to do that which is right in his own eyes? Are you aware, sir, that you are preaching Anarchy?” It was now my turn to double. “Anarchy is a strong expression,” said I, most disingenuously; “all I meant to say is that the less the State interferes between man and man, the better; surely you will admit that?” And now I saw from my interlocutor's contracted brow and compressed lips that an answer was forthcoming which would knock all the wind out of me. And I was right. “Do you see that house

with the flags on the roof and that sculptured group over the entrance representing the World, the Flesh, and the Devil?" "I see the house, but, if you will pardon me, I think the group is intended for the Three Graces." The parson shot an angry glance at me; he knew well enough what the figures were meant for; but even the godly have their sense of grim humour. He continued: "That is the porch of Hell; and there at the corner yawns Hell itself: they are commonly called Old Joe's Theatre of Varieties, and the Green Griffin: but we prefer to call them by their right names." "Dear me!" I said, somewhat appalled by the earnestness of his manner, "are they very dreadful places?" I was beginning to feel quite "creepy," and could almost smell the brimstone. But, without heeding my query, he continued: "Are we to look on with folded hands, while innocent young girls crowd into that sink of iniquity, listen to ribald and obscene songs, witness semi - nude and licentious dances, meet with dissolute characters, and finally enter the jaws of the Green Griffin to drink of the stream that maddens the soul, that deadens the conscience, and that fires the passions?" Here he paused for breath, and then in a sepulchral whisper he added: "And what follows? What follows?" This question he asked several times, each time in a lower key, with his eyes fixed on mine as though he expected to read the answer at the back of my skull on the inside. "I will tell you what follows," he continued, to my great relief; "the end is Mrs. Fletcher's." There was something so grotesque in this anti-climax that I gave sudden vent to a short explosive laugh, like the snap of the electric spark. I could not help it, and I was truly sorry to be so rude, and, in order to avoid mutual embarrassment, I fairly bolted down the street, leaving my teacher transfixed with pious horror. To a denizen of the village, doubtless, long association had imbued the name of Mrs. Fletcher with a lurid connotation, like unto the soothing influence of that blessed word Mesopotamia,—only the reverse.

I was now in the position of the happy man of fiction "with a pocket full of money and a cellar full of beer"; only my cellar was nine miles off and my money was inconvertible, to all practical intents and purposes. There was no other inn; I dare not try the Green Griffin, and I did not know the way to "Mrs. Fletcher's." I wanted to get back to town. "Is there a railway station anywhere near here?" I inquired of a bald-headed man, who was removing flower - pots from his front parlour window - sill. "Railway station?" he repeated with a snigger, "not much; how should there be a railway station?" "And pray why not?" I asked. "You may well ask," replied the bald-headed man; "if you knew these parts, you would know that half the land between here and town belongs to Lord Brownmead; and he opposed the bill which the Company brought into Parliament; so of course the Lords threw it out and refused the concession: that is why there is no railway station. That is why you and I may walk or creep or go in balloons. I wonder his lordship or his lordship's ancestors ever allowed the high road to be made. Why should not you and I grub our way underground, like moles? It is good enough for us, I suppose. Railway station, indeed!" And down came a flower-pot with a crash, just to accentuate the absurdity of the idea. "Lord Brownmead belongs to the Liberty and Property Defence League, you know, and he says no one has a right to interfere with his liberty to do what he likes with his own land. Quite right; quite right," he continued in the same tone of bitter irony, "nothing like liberty and property!" This was an awkward dig for me. I had always believed in liberty, and I was thinking of joining Lord Brownmead's association. "Perhaps there is a tramway or some other sufficient means of rapid communication," I suggested, "in

which case it may be that a railway is not imperatively necessary." "Perhaps there is," sneered the little man, "perhaps there is; only there isn't, don't you see, so that's where it is; and if you prefer walking or paying for a fly, I am sure I have no objection. You have my full permission, and Lord Brownmead's too; only mind you don't take the short cut by the bridle-path, because that is closed. It appears there is no right-of-way. It is private, quite private. Don't forget." I did not want the irascible little man to take me for a toady, so I merely asked why there was no tramway. "Why?" he shouted, and I began to fear physical argument, "why? because Lord Brownmead and the carriage folk say that the tramways cut up the road and damage the wheels of their carriages: that's why. Isn't it a sufficient reason for you? We lower ten thousand must walk, for fear the upper ten should have to pay for an extra coat of paint at the carriage - builder's. That's reasonable, isn't it?" "I do not know that it is, my dear sir," I replied, "but after all you know we have a right to use the common road in any way for which it was originally intended. They can do no more. And it does seem to me that a tramway monopolises for the benefit of a class (a large class, I grant you) more than its fair share of the common rights of way. Ordinary traffic is very much impeded by it, and the rails do certainly cause damage and annoyance to persons who never use the public vehicles. Trams may be expedient, friend, but they certainly are not just." I thought this would have wound up the little man for at least another quarter of an hour, but who can read the human mind? Not another word did he utter. I fancy my last remark had satisfied him that I was a Tory or an aristocrat or one of the carriage folk, and consequently beneath contempt and outside the pale of reason. After an awkward pause, I ventured to say: "Well, thank you, I wish you good morning," but even that elicited no response, and 1 walked slowly off, feeling some slight loss of dignity. I presently ascertained that coaches ran every two hours from the Green Griffin to the Royal Oak in London, a fact which the bald-headed man had maliciously (as I thought) concealed from me. The line had been established, as the barman of the Griffin told me, by Lord Brownmead himself some years ago and was maintained at considerable loss for the benefit of his tenantry and his poorer neighbours; and, as some people thought, to make amends for his opposition to the tramway. "Sometimes," added the barman, "his lordship drives his self, and then, O lor!" There could be no doubt from the gusto with which the last words were pronounced that this individual derived a more tangible joy from these occasions than mere sympathy with the honoured guest who occupied a seat on the box next the distinguished whip: and I accordingly slipped half-a-crown into his hand *à propos de bottes*. He expressed no surprise whatever, but just as the coach was about to start, I found myself the pampered ward of a posse of ostlers, grooms, and hangers-on, who literally lifted me into the envied seat and evinced the most touching concern for my comfort and safety. My knees were swathed in rugs and the apron was firmly buckled across to keep me warm and dry, without any effort on my part; and as the leaders straightened out the traces and Lord Brownmead cracked the whip, half-a-dozen pair of eyes "looked towards me," while their owners drank what they were pleased to call my health, but which looked to me more like beer. As we dashed down the high street, a little man with a bald head cast a withering glance at the coach and its occupants, and, when his eyes met mine, his expression said as plain as words: "*I thought so*." I soon forgot him, and fell to reflecting on the curious circumstance that it should be in the power of a few potmen and stablemen to sell a nobleman's company and conversation for the sum of half-a-crown. Yet so it undoubtedly was.

And yet, after all, it is hardly stranger than that these same potmen and millions more of their own class should have the power of selling to the highest bidder a six-hundred-and-seventieth part of kingly prerogative. The divine right of kings is just what it ever was,—the right of the strong to trample on the weak, the absolute despotism of the *effective* majority. Only to-day, instead of being conferred in its entirety on a single person, it is cut up into six hundred and seventy little bits, and sold in lots to the highest bidder, by a ring of five millions of potrnen and their like.

Such is the new democracy, I thought, and I might possibly have built up an essay on the reflection, when I was suddenly roused from my reverie by a grunt from the box seat. “I beg your pardon,” said I, “I did not quite catch what you said.” “Fine bird,” repeated his lordship in a louder grunt, and jerking his thumb in the direction of a distant coppice. “Begin to-morrow; capital prospect,” he continued. “Begin what?” I asked, a little ashamed of my stupidity. “October to-morrow,” he replied, “forgotten, eh?” “Oh, ah, yes, of course, October the 1st, pheasant-shooting, I see,” I replied, as soon as I caught his meaning. “Done any good this season, sir?” he went on. “Good, how? what good? what in? I don't quite understand,” said I. “Moors, moors,” explained Lord Brownmead, “grouse, sir, grouse: are you … er … er?”

“Oh, I see,” I hastened to reply; “you mean have I shot many grouse this season; no; I have not been to Scotland this year; besides, I am short-sighted, and do not shoot at all.” A man who did not shoot was hardly worth talking to, and a long silence ensued. At last our Jehu took pity on me. “Fish, I suppose; can't hunt all the year round.” I replied that I did not care for fishing, and that I had no horses and could not afford to hunt. I was fast becoming an object of keen interest. My last admission was followed by a series of grunts at intervals' of about half a minute, and at last with a zeal and earnestness which he had not yet exhibited, and in a louder key than heretofore, Lord Brownmead turned upon me with this query: “Then what the doose do you do to kill time, dammy?” I explained that I should have no difficulty in killing double the quantity of that article if I could get it. “Out of the twenty-four hours,” said I, “which is the usual allowance in a day, I sleep seven, I work seven, I spend about two over my meals, and that only leaves eight for recreation.” “Ay, ay, but what do you mean by recreation, sir? That's just it, dammy.” “Oh, sometimes I go to the theatre, sometimes to some music-hall; then I go and spend the evening with friends, and all that sort of thing.” “Balls, eh?” “No, I am not fond of dancing.” “Ha, humph, that's better; the tenth don't dance, you know; never went to a prancing party in my life.” “Then last night I went to the Agricultural Hall to hear Mr. Gladstone,” I continued. “Eh? what? Mr. who? Be good enough not to mention that man's name in my presence, sir. He's an underground fellow, sir; an underground fellow.” I was evidently on thin ice; so, in order to turn the conversation, I remarked: “Pretty country this, my lord.” “Pretty country be damned!” was the amiable response; “it is not like the same country since that infernal bill was passed.” “Indeed! What bill is that?” Lord Brownmead cast upon me a look of ineffable scorn. “What bill do you suppose, sir? Are you a foreigner? I should like to feed that fellow on hares and rabbits for the rest of his life, sir.” “Has the Hares and Rabbits Act done much harm?” inquired. “Done much harm? Has it revolutionised the country, you mean; has it ruined the agriculturist? has it set class against class? has it turned honest farmers into poachers and vermin? See that spire in the trees over there? Well, that poor devil used to live on

his glebe; he has about fifteen kids, all told; he used to have rabbit-pie every Sunday. And now there isn't a blessed rabbit in the place." I presumed he was speaking of the pastor and not the steeple, so I expressed sympathy with one who was so very much a father under the melancholy circumstances. "Still," said I, "the rabbits used to eat up a good deal of the crops, I am told." "Nonsense, sir; nonsense! don't believe it," growled his lordship, "they never ate a single blade more than they were worth; and if they did, the devils got it back out of their rents." Most of my companion's neighbours appeared to be devils of one sort or another, but I think he was referring to the farmers on this occasion. "The devils have all got votes, sir, that's what it is; they've all got votes. I remember the time when a decent tenant would as as soon have shot his wife as a rabbit. The fact is, we are moving a deal too quickly; downhill too, and no brake on." I did not wish to express agreement with this sentiment, so I merely said: "I believe you are a member of the Liberty and Property Defence League?" "Very likely; very likely; if it is a good thing got up to counteract that underground scoundrel. Yes, I think my secretary did put me down for £50 a year. He said they were going to block this Tenant's Compensation Bill, or something or other. Good society, very; ought to be supported by honest men." "Then would you not give a tenant compensation for unexhausted improvements?" I asked. "Compensation!" bawled Lord Brownmead; "compensation for what? Good God! If one of those fellows on rny town property put up a conservatory, or raised his house a story, or built a new wing, do you suppose at the end of his lease he would ask for compensation? He would think himself mad to do it,—mad, sir. And why should the country be different from the town, eh? The devils go into the thing with their eyes open, I suppose. A bargain's a bargain, isn't it? What do they mean by compensation? I'd compensate them. Clap them into the stocks. 'That's what they want. Depend upon it, sir," he added, lowering his voice to a husky whisper, "the old man is an unscrupulous agitator, and if I had my way I would lock him up. If he's loose much longer he will ruin the country. Whoa, Jerry; steady, my pet; damn that horse!" We were now drawing up at the Royal Oak, and, to say the truth, I was not altogether sorry to get out of the atmosphere of fine, old, crusted Toryism, and walk along the street among my equals. And yet there was about the man a rugged horror of mean meddling and State coddling which one could not but respect. "A bargain's a bargain." Well, that is not very original; but it argues a healthy moral tone. The rabbit-pie argument struck me as rather weak, but, take him for all in all, I have met politicians who have disgusted me a good deal more than Lord Brownmead.

It was now dusk, and the evening papers were out. I stopped to read the placards on the wall, giving a summary of the day's news. There was nothing very new. "Three children murdered by a mother." "Great fire in the Strand." "Loss of the *Seagull* with all hands." On looking into the details to which these announcements referred, I found that the mother of the children was a widow, who had insured the lives of her little ones in the London and County Fire Office for £10 each, and had then pushed them into a reservoir. Her explanation that they had fallen in while playing would no doubt have met with general acceptance but for the discovery of marks of violence on the neck of the eldest daughter, who had evidently struggled resolutely for life. Other evidence then cropped up, which made it certain that the children were victims of foul play. The editor of the paper expressed himself to the effect that no insurance company ought to be allowed to insure the lives of children, thus putting temptation in

the way of the poor. Oddly enough, the fire in the Strand seemed to have resulted from a similar motive and a similar transaction. A hairdresser had insured his fittings and stock for £150 and then set fire to his shop. Commenting on this, the editor had nothing to say about the iniquity of tempting people to commit arson, but he thought the State should see that all buildings in a public street were provided with concrete floors and asbestos paint; and that muslin curtains should be forbidden. The *Seagull*, laden with coals for Gibraltar, had gone down within sight of land, off "Holyhead, before assistance could be obtained. It appears she had been insured in the Liverpool Mutual Marine Association for double the value of hull and cargo. One of the crew had refused to go, on the ground that she was unseaworthy, and he was sentenced to fourteen days' imprisonment under the Merchant Shipping Act. The editor was of opinion that, although he had been justly sentenced, still he thought this fearful fulfilment of his prognostication would have such an effect on the minds of the public that his further incarceration would be highly inexpedient, and might lead to rioting. He was further of opinion that marine insurance ought to be entirely prohibited, except when undertaken by underwriters "in the usual way." This article, I have since heard, made a great sensation at Lloyd's, and 4000 copies of the paper were gratuitously distributed in the neighbourhood of the docks both in Liverpool and London. A committee is being formed for the purpose of urging Parliament to make all marine policies void, except those which have been made "in the usual way." It is obvious that the crew of the *Seagull* have not died in vain. They have perished in the cause of an ancient monopoly. The public indignation at their cruel fate is being used as a handy hook on which to hang all "new-fangled systems of marine insurance which have not stood the test of time, and which have hardly yet seen the light of day."

I had reached my own door when I was attracted by a shout and the wrangling of many angry voices round the corner of the street. Running round, I saw the *débris* of an overturned dog-cart. Several persons seemed to be engaged in an animated debate in a small circle, while the crowd played the *rôle* of a Greek chorus. The disputants appeared to be a Young gentleman of mettle, in a high collar and dogskin gloves, a broken-down solicitor's clerk, the usual policeman, and a workman in corduroys. It was easy to explain the construction of the group. The "masher" was obviously the owner of the ill-fated dog-cart; the workman was the watchman in charge of the traction engine which was lying quietly at the side of the road with a red lamp at each side. The clerk was "the man in the street," the *vir pietate gravis* called in as arbitrator by both disputants; and the policeman was there as a matter of course. When I reached the spot and worked my way to the inner circle, the debate had reached this stage: "I tell you, any well-bred horse would shy at a Godforsaken machine like that; your people had no right to leave it there. I will make them pay for this." Workman—"Well, them's my instructions; here's my lights all a-burnin', and you shouldn't drive horses like that in the streets of London. They'll shy at anything, and it isn't safe." Masher—"I beg your pardon, I tell you any horse would shy at that; and what is more, I believe traction engines are unlawful in the streets. I know I have heard so." Clerk—"Well, I can't quite say, but I think so. I know elephants are not allowed to go through the streets without a special license in the daytime, because our people had a case in which a man wanted to ride an elephant through the city and distribute coloured leaflets, and the Bench said that …" Policeman—"Traction

engines isn't elephants; we don't want to know about elephants; which way was you coming when your horse caught sight of this engine? That is what I want to get at." Straight up King Street, constable, and this fellow was fast asleep near the machine." "No, I warn't fast asleep; didn't I ketch 'old of the 'orse?" "Oh yes, you woke up, but you never gave any warning; why didn't you shout out, ' Beware of the traction engine'?" "What for? Ain't you got no eyes? Am I to be shouting all day? What is there worse about this 'ere engine than about a flappin' van? Eh, policeman, what is there worse, I say?" Policeman (firmly)—"That's not the question. The question is, was your lamp burning?" "A course they was a-burnin"; ain't they a-burnin' now?" Clerk (soothingly)—" They were burning. "Policeman (treading on clerk's toes)—" What do you want here? Be off. What have you got to do with it? Off with you. Now, sir, turning to the owner of the broken dog-cart, "was this man asleep on dooty?" "Well, I cannot exactly swear he was asleep, but" (contriving to slip something into the expectant hand of the officer) "but I am sure he was not awake—not wide awake." "Thank you, sir"; turning to the watchman, "you see where you are now; I shall report you asleep on dooty." "But I warn't asleep, I tell you." "You *was*: didn't you hear the gentleman say you wasn't awake?" This was the conclusion; there was a slight and sullen murmur in the crowd; but it died away. The incident was at an end; law was vindicated; justice was done. Yes, *done*, and no mistake! But I left without any clear idea as to the right of an engine—owner to the use of the common roads. The story of the elephant seemed germane to the issue, but it was nipped in the bud. I went home, swallowed my dinner, not without appetite, and set forth in search of entertainment.

There was a good deal of choice. There always is in London, except on Sundays; and even then there is the choice between the church and the public-house. There were the brothers Goliah, and the infant Samuel on the high rope, and Miss Lottie Luzone the teetotautomaton, and John Ball the Stentor Comique, and the Sisters Delilah, and Signor Farini with his wonderful pigeons, and the tiger-tamer of Bengal, and the Pearl family with their unequalled aquatic feats, and I don't know what else. While I was dwelling on the merits of these rival attractions, I heard a familiar voice at the door: "Come on, old fellow; come to the National Liberal; Stewart Headlam is going to open a debate on the County Council and the Music-halls. We will have a high old time. Come and speak." As a rule, I fear the Empire or the Aquarium would have prevailed over the great Liberal Club as a place of after-dinner entertainment; but on this occasion I had a newly-aroused interest in all such questions as the one about to be discussed. So I put on my hat and jumped into the hansom which was waiting at the door. *En passant*, you may have noticed that this is the second time I have recorded the fact that "I put on my hat." English novelists are very careful about this precaution. "He put on his hat and walked out of the room." "He wished her goodbye, and, putting on his hat, he went out as he had come in." There is never a word said about the hero's topcoat or his gloves, no matter how cold the weather may be, but the putting on of the hat is always carefully chronicled. Now, there Is a reason for this. It is a well-established principle of English common law that, whenever a public disturbance or street *mêlée* or other shindy takes place, the representative of order shall single out a suitable scapegoat from among the crowd. In case of a mutiny in the Austrian army, I am told, it is usual to shoot every tenth man, who is chosen by lot. But here in merry England the instructions are to look round for a man without a hat. When found, he is marched off to the police station with the approval of all

concerned. It is part of our unwritten law. Some time ago the principle was actually applied in a *cause célèbre* by the magistrate himself. A journalist summoned no less a personage than the Duke of Cambridge for assault. The facts were not denied, and the witnesses were all agreed, when succour came from an unexpected quarter. “Is it a fact, as I have seen it stated in the papers,” asked the worthy stipendiary, “is it a fact, I ask, that the plaintiff was without a hat?” There was no gainsaying this. The prosecutor *was* hatless at the time of the alleged assault. That settled the matter; and the commander-in-chief of the British army left the court (metaphorically speaking) without a stain on his character.

However, as I have said, I put on my hat, and off we drove to the conference room of the big club with the odd name. “National” was first used as a political term by the late Benjamin Disraeli to signify the patriotic as opposed to the cosmopolitan and anti-national. “Liberal” was first used in a political sense about 1815, to denote the advocates of liberty as opposed to the “serviles” who believed in State control. And yet the members of the club avowedly uphold State interference in all things, and dub the doctrine of *laissez faire* the creed of selfishness. Still the building is a fine and commodious one, and what's in a name, after all?

When we reached the political arena, Mr. Headlam, who is a socialist, was in the middle of a very able individualistic harangue. Indeed, I have never heard the case for moral liberty better stated and more courageously advocated than on this occasion. I was anxious to hear what the censor party might have to say. I half expected to see some weary ascetic—perhaps an austere cardinal—rise in his place and wade through some solemn passages from the sententious Hooker. I was agreeably disappointed when a chirpy little Scotchman with an amusing brogue and a moth-eaten appearance started off with prattle of this kind: “Gentlemen, there's no one loves liberty more than me. But we've got to draw a line at decency, you see. I've been elected to sit on the council and to see that that line is drawn at the right place. That is my duty, and my duty I mean to do. Everything which is calculated to bring a blush to the cheek of a pure maiden must be put down. “And there's another thing; I say that music-halls where intoxicating liquors is sold must be put down. We are not going to tolerate places what incites to fornication and drunkenness. But at the same time we are no foes to liberty—that is, liberty to do right, and that's the only liberty worth fighting for, depend upon it.” Mr. McDoodle slapped his knee with emphatic violence and sat down. “I should like to ask the last speaker”, said a thin gentleman in a back row, “whether it is altogether consistent for a State which has repealed every statute penalising fornication itself to keep up a lot of little worrying measures for the purpose of penalising conduct which may possibly lead to fornication. In other words, fornication is perfectly legal, but a song likely to lead to fornication is illegal. Is this consistent?” “Allow me,” shouted a stout man with a loud voice; “perhaps, being a lawyer, I know more about these matters than Mr. McDoodle possibly can. The gentleman who asks the question is in error. His major premise is false. Fornication in this country is a misdemeanour, by 23 & 24 Vict. c. 32.” “Pardon me,” replied the voice in the back row, “I also am a lawyer, and I say that the Act you refer to does not make fornication a misdemeanour; it refers only to conspiracy to induce a woman to commit the sin; that is a very different matter.” “I don't see that it is,” replied the stout man, “for what is a conspiracy but an agreement to do wrong? Very well, then, an

agreement between a man and a woman to do wrong is itself a conspiracy. And since they cannot commit this sin without agreement (if they do, of course it comes under another head), it follows that I am right." "Not at all," rejoined the lawyer at the back, "not at all; I fear your ideas of conspiracy are a little mixed. If you will consult Stephen's Digest of the Criminal Law, which I hold in my hand, you will find these words: ' provided that an agreement between a man and a woman to commit fornication is not a conspiracy.' I suppose Mr. Justice Stephen may be taken to know something about the law." Chairman (coming to the rescue)—"I think, gentlemen, we are getting off the lines. Perhaps Mr. Gattie will favour us with a few words?" "I confess, sir," responded that gentleman, "I confess I am in a difficulty. Are we discussing whether indecency is wrong or not? Or is the question before the meeting whether the State should undertake the definition? Or is it whether Mr. McDoodle and his coadjutors are the proper persons to act as *censores morum*? My own views on these three points are these: that indecency, when properly defined, is wrong; that Mr McDoodle and his friends are not competent to define it, nor to suggest means for suppressing it; and, finally, that the State had much better leave the settlement of the question to public opinion and the common sense and common taste of the people." A whirl of arguments, relevant and irrelevant, followed his speech, which contained references to a pretty wide field of State interferences, showing their invariable and inevitable failure all along the line. One apoplectic little man was loudly demanding an answer to his question "whether we are going to allow people to run down the street in a state of complete nudity." That is what he wanted to know. Some one replied that in this climate the danger was remote, and that the roughs would provide a sufficient deterrent. Some one else wanted to know whether it was decent to hawk a certain evening journal in the streets, and a very earnest young man inquired whether his hearers had ever read the thirty-sixth chapter of Genesis, and whether, if so, it was calculated to raise a blush to the cheek of virtue. A wag replied: "There *is* no cheek about virtue." And so the ball was kept rolling. And we left without having formed the faintest notion as to whether the State should interfere with the amusements of the people or not; whether it should limit its interference to the enforcement of decency and propriety; what those terms signify for the practical purpose; whether in any case it should delegate this duty to local authorities, and if so, to what authorities; whether it should itself take the initiative, or leave it to persons considering themselves injured; whether such alleged injury should be direct or indirect, and, in either case, what those expressions mean. However, a good deal of dust had been kicked up, and even the most cocksure of those who had entered the lists went out, I doubt not, with a conviction that there was a good deal to be said on all sides of the question. That, in itself, was an unmixed good.

Walking home, in the neighbourhood of Oxford Circus, a respectable young woman asked if I would be good enough to tell her the nearest way to Russell Square. She had hardly got the words out of her mouth, when a policeman emerged from a doorway and charged her with solicitation, asking me to accompany them to the station and sign the charge-sheet. Not being a member of the profession, of course the young woman had neglected to "pay her footing"; hence the official zeal. Old hands had with impunity accosted me at least a dozen times in the same street. I ventured to remonstrate, when I was myself charged with being drunk and attempting a rescue, and I should certainly have ended my day in a State-furnished apartment, had not

another keeper of the Queen's peace come alongside and drawn away my accuser, whispering something in his ear the while. I recognised the features of an old acquaintance with whom I have an occasional glass at the Bottle of Hay on my way home from the club.

I reached home at last, and the events of the day battled with one another for precedence in my dreams. Freedom, order; order, freedom. Which is it to be? When I arose in the morning, I tried to record the previous day's experiences just as they came to me, without offering any dogmatic opinion as to the rights and the wrongs of the several cases which arose.

the end

[1]Is it not a pity to go to France for a term to denote a political idea so peculiarly English? The correct and idiomatic English for laissez-faire is let be. “Let me be,” says the boy in the street, protesting against interference. Moreover, it is not only colloquial but classical. “The rest said, Let be, let us see whether Elias will come to save him” (Matt, xxvii. 49).

[1]I may, however, refer to a quaint tract entitled “Municipal Socialism,” published by the Liberty and Property Defence League. This capital satire on modern local legislation I take up in the name of our forefathers and fling at the heads of those pharisaical reformers of to-day who never weary of tittering at “the wisdom of our ancestors.”

[1]“Whereas, notwithstanding all former laws and provisions already made, the inordinate and extreme vice of excessive drinking and drunkenness doth more and more abound, to the great offence of Almighty God and the wasteful destruction of God's good creatures.”

[1]See Mr. Spence's contribution to the *Symposium on the Land Question*, p. 42, 1890 (T. Fisher Unwin).

[1]*Symposium on the Land Question.*

[1]Blackstone.

[1]*Illegitimate Children: An Inquiry into their Personal Rights, and a Plea for the Abolition of Illegitimacy.* By J. Greevz Fisher, a vice-president of the Legitimation League. 1893. W. Reeves, London.

[1]Mr. Henry George, the “Orthodox,” by R. S. Moffat (Remington and Co.)