CHAPTER VIII.

OF THE ORDINARY FUNCTIONS OF GOVERNMENT, CONSIDERED AS TO THEIR ECONOMICAL EFFECTS.

§ 1. BEFORE we discuss the line of demarcation between the things with which governments should, and those with which they should not, directly interfere, it is necessary to consider the economical effects, whether of a bad or of a good complexion, arising from the manner in which they acquit themselves of the duties which devolve on them in all societies, and which no one denies to be incumbent on them.

The first of these is the protection of person and property. There is no need to expatiate on the influence exercised over the economical interests of society by the degree of completeness with which this duty of government is performed. Insecurity of person and property, is as much as to say, uncertainty of the connection between all human exertion or sacrifice, and the attainment of the ends for the sake of which they are undergone. It means, uncertainty whether they who sow shall reap, whether they who produce shall consume, and they who spare to-day shall enjoy to-morrow. It means, not only that labour and frugality are not the road to acquisition, but that violence is. When person and property are to a certain degree insecure, all the possessions of the weak are at the mercy of the strong. No one can keep what he has produced, unless he is more capable of defending it, than others who give no part of their time and exertions to useful industry are of taking it from him. The productive classes, therefore, when the insecurity surpasses a certain point, being unequal to their own protection against the predatory population, are obliged to place themselves indi-

vidually in a state of dependence on some member of the predatory class, that it may be his interest to shield them from all depredation except his own. In this manner, in the middle ages, allodial property generally became feudal, and numbers of the poorer freemen voluntarily made themselves and their posterity serfs of some military lord.

Nevertheless, in attaching to this great requisite, security of person and property, the importance which is justly due to it, we must not forget that even for economical purposes there are other things quite as indispensable, the presence of which will often make up for a very considerable degree of imperfection in the protective arrangements of government. As was observed in a previous chapter*, the free cities of Italy, Flanders, and the Hanseatic league, were habitually in a state of such internal turbulence, varied by such destructive external wars, that person and property enjoyed very imperfect protection; yet during several centuries they increased rapidly in wealth and prosperity, brought many of the industrial arts to a high degree of advancement, carried on distant and dangerous voyages of exploration and commerce with extraordinary success, became an overmatch in power for the greatest feudal lords, and could defend themselves even against the sovereigns of Europe: because in the midst of turmoil and violence, the citizens of those towns enjoyed a certain rude freedom, under conditions of union and co-operation, which, taken together, made them a brave, energetic, and high-spirited people, and fostered a great amount of public spirit and patriotism. The prosperity of these and other free states in a lawless age, shows that a certain degree of insecurity, in some combinations of circumstances, has good as well as bad effects, by making energy and practical ability the conditions of safety. Insecurity paralyzes, only when it is such in nature and in degree, that no energy, of which mankind in general are capable, affords any tolerable

* Supra, vol. i. p. 135.

means of self-protection. And this is a main reason why oppression by the government, whose power is generally irresistible by any efforts that can be made by individuals, has so much more baneful an effect on the springs of national prosperity, than almost any degree of lawlessness and turbulence under free institutions. Nations have acquired some wealth, and made some progress in improvement, in states of social union so imperfect as to border on anarchy: but no countries in which the people were habitually exposed to arbitrary exactions from the officers of government, ever yet continued to have industry or wealth. A few generations of such a government never fail to extinguish both. Some of the fairest, and once the most prosperous, regions of the earth, have, under the Roman and afterwards under the Turkish dominion, been reduced to a desert, solely by that cause. I say solely, because they would have recovered with the utmost rapidity, as countries always do, from the devastations of war, or any other temporary calamities. Difficulties and hardships are often but an incentive to exertion: what is fatal to it, is the belief that it will not be suffered to produce its fruits.

§ 2. Simple over-taxation by government, though a great evil, is not comparable in the economical part of its mischiefs to exactions much more moderate in amount, but which either subject the contributor to the arbitrary mandate of government officers, or are so laid on as to place skill, industry, and frugality, at a disadvantage. The burthen of taxation in our own country is very great, yet as every one knows its limit, and is seldom made to pay more than he expects and calculates on, and as the modes of taxation are not of such a kind as much to impair the motives to industry and economy, the sources of prosperity are little diminished by the pressure of taxation; they may even, as some think, be increased, by the extra exertions made to compensate for the pressure of the taxes. But in the barbarous despotisms of many countries of the East, where taxation consists in fastening upon those who have succeeded in acquiring something, in order to confiscate it, unless the possessor buys its release by submitting to give some large sum as a compromise, we cannot expect to find voluntary industry, or wealth derived from any source but plunder. And even in comparatively civilized countries, bad modes of raising a revenue have had effects similar in kind, though in an inferior degree. French writers before the Revolution represented the *taille* as a main cause of the backward state of agriculture, and of the wretched condition of the rural population; not from its amount, but because, being proportioned to the visible capital of the cultivator, it gave him a motive for appearing poor, which sufficed to turn the scale in favour of indolence. The arbitrary powers also of fiscal officers, of *intendants* and *subdélégués*, were more destructive of prosperity than a far larger amount of exactions, because they destroyed security: there was a marked superiority in the condition of the *pays d'états*, which were exempt from this scourge. The universal venality ascribed to Russian functionaries, must be an immense drag on the capabilities of economical improvement possessed so abundantly by the Russian empire: since the emoluments of public officers must depend on the success with which they can multiply vexations, for the purpose of being bought off by bribes.

Yet mere excess of taxation, even when not aggravated by uncertainty, is, independently of its injustice, a serious economical evil. It may be carried so far as to discourage industry by insufficiency of reward. Very long before it reaches this point, it prevents or greatly checks accumulation, or causes the capital accumulated to be sent for investment to foreign countries. Taxes which fall on profits, even though that kind of income may not pay more than its just share, necessarily diminish the motive to any saving, except that which is made for investment in foreign countries where profits are higher. Holland, for example,

seems to have long since reached the practical minimum of profits: already in the last century her wealthy capitalists had a great part of their fortunes invested in the loans and joint-stock speculations of other countries: and this low rate of profit is ascribed to the heavy taxation, which had been in some measure forced on her by the circumstances of her position and history. The taxes, indeed, besides their great amount, were many of them on necessaries, a kind of tax peculiarly injurious to industry and accumulation. But when the aggregate amount of taxation is very great, it is inevitable that recourse must be had for part of it to taxes of an objectionable character. And any taxes on consumption, when heavy, even if not operating on profits, have something of the same injurious effect, by driving persons of moderate means to live abroad, often taking their capital with them. Although I by no means join with those political economists who think no state of national existence desirable in which there is not a rapid increase of wealth, I cannot overlook the many disadvantages to an independent nation from being brought prematurely to a stationary state, while the neighbouring countries continue advancing.

§ 3. The subject of protection to person and property, considered as afforded by a government, ramifies widely, into a number of indirect channels. It embraces, for example, the whole subject of the perfection or inefficiency of the means provided for the ascertainment of rights and the redress of injuries. Person and property cannot be considered secure where the administration of justice is imperfect, either from defect of integrity or capacity in the tribunals, or because the delay, vexation, and expense accompanying their operation impose a heavy tax on those who appeal to them, and make it preferable to submit to any endurable amount of the evils which they are designed to remedy. In England there is no fault to be found with the administration of justice, so far as integrity is concerned; a result which the progress of social

improvement may also be supposed to have brought about in several other nations of Europe. But legal and judicial imperfections of other kinds are abundant; and, in England especially, are a large abatement from the value of the services which the government renders back to the people in return for our enormous taxation. In the first place, the incognoscibility (as Bentham termed it) of the law, and its extreme uncertainty, even to those who best know it, render a resort to the tribunals often necessary for obtaining justice, when, there being no dispute as to facts, no litigation ought to be required. In the next place, the procedure of the tribunals is so replete with delay, vexation, and expense, that the price at which justice is at last obtained is an evil outweighing a very considerable amount of injustice; and the wrong side, even that which the law considers such, has many chances of gaining its point, through the abandonment of litigation by the other party for want of funds, or through a compromise in which a sacrifice is made of just rights to terminate the suit, or through some technical quirk, whereby a decision is obtained on some other ground than the merits. This last detestable incident often happens without blame to the judge, under a system of law, of which a great part rests on no rational principles adapted to the present state of society, but was originally founded partly on a kind of whims and conceits, and partly on the principles and incidents of feudal tenure, (which now survive only as legal fictions); and has only been very imperfectly adapted, as cases arose, to the changes which had taken place in society. Of all parts of the English legal system, the Court of Chancery, which has the best substantive law, is incomparably the worst as to delay, vexation, and expense; and this is the only tribunal for most of the classes of cases which are in their nature the most complicated, such as cases of partnership, and the great range and variety of cases which come under the denomination of trust.

Fortunately for the prosperity of England, the greater

part of the mercantile law is comparatively modern, and was made by the tribunals, by the simple process of recognizing and giving force of law to the usages which, from motives of convenience, had grown up among merchants themselves: so that this part of the law, at least, was substantially made by those who were most interested in its goodness: while the defects of the tribunals have been the less practically pernicious in reference to commercial transactions, because the importance of credit, which depends on character, renders the restraints of opinion (though, as daily experience proves, an insufficient) yet a very powerful, protection against those forms of mercantile dishonesty which are generally recognized as such.

The imperfections of the law, both in its substance and in its procedure, fall heaviest upon the interests connected with what is technically called *real* property; in the general language of European jurisprudence, immoveable property. With respect to all this portion of the wealth of the community, the law fails egregiously in the protection which it undertakes to provide. It fails, first, by the uncertainty, and the maze of technicalities, which make it impossible for any one, at however great an expense, to possess a title to land which he can positively know to be unassailable. It fails, secondly, in omitting to provide due evidence of transactions, by a proper registration of legal documents. It fails, thirdly, by creating a necessity for operose and expensive instruments and formalities (independently of fiscal burthens) on occasion of the purchase and sale, or even the lease or mortgage, of immoveable property. And, fourthly, it fails by the intolerable expense and delay of law proceedings, in almost all cases in which real property is concerned. There is no doubt that the greatest sufferers by the defects of the higher courts of civil law are the landowners. Legal expenses, either those of actual litigation, or of the preparation of legal instruments, form, I apprehend, no inconsiderable item in the annual expenditure of most persons of large landed property, and

the saleable value of their land is greatly impaired, by the difficulty of giving to the buyer complete confidence in the title; independently of the legal expenses which accompany the transfer. Yet the landowners, though they have been masters of the legislation of England, to say the least, since 1688, have never made a single move in the direction of law reform, and have been strenuous opponents of some of the improvements of which they would more particularly reap the benefit; especially that great one of a registration of contracts affecting land, which when proposed by a Commission of eminent real-property lawyers, and introduced into the House of Commons by Lord Campbell, was so offensive to the general body of landlords, and was rejected by so large a majority, as to have discouraged any repetition of the attempt. This irrational hostility to improvement, in a case in which their own interest would be the most benefited by it, must be ascribed to an intense timidity on the subject of their titles, generated by the defects of the very law which they refuse to alter; and to a conscious ignorance, and incapacity of judgment, on all legal subjects, which makes them helplessly defer to the opinion of their professional advisers, heedless of the fact that every imperfection of the law, in proportion as it is burthensome to them, brings gain to the lawyer.

In so far as the defects of legal arrangements are a mere burthen on the landowner, they do not much affect the sources of production: but the uncertainty of the titles under which land is held, must often act as a great discouragement to the expenditure of capital in its improvement; and the expense of making transfers, operates to prevent land from coming into the hands of those who would use it to most advantage; often amounting, in the case of small purchases, to more than the price of the land, and tantamount, therefore, to a prohibition of the purchase and sale of land in small portions, unless in exceptional circumstances. Such purchases, however, are almost everywhere extremely desirable, there being hardly any country in which landed property is not

either too much or too little subdivided, requiring either that great estates should be broken down, or that small ones should be bought up and consolidated. To make land as easily transferable as stock, would be one of the greatest economical improvements which could be bestowed on a country; and has been shown, again and again, to have no insuperable difficulty attending it.

Besides the excellences or defects that belong to the law and judicature of a country as a system of arrangements for attaining direct practical ends, much also depends, even in an economical point of view, upon the moral influences of the law. Enough has been said in a former place*, on the degree in which both the industrial and all other combined operations of mankind depend for efficiency on their being able to rely on one another for probity and fidelity to engagements; from which we see how greatly even the economical prosperity of a country is liable to be affected, by anything in its institutions by which either integrity and trustworthiness, or the contrary qualities, are encouraged. The law everywhere ostensibly favours at least pecuniary honesty and the faith of contracts; but if it affords facilities for evading those obligations by trick and chicanery, or by the unscrupulous use of riches in instituting unjust or resisting just litigation; if there are ways and means by which persons may attain the ends of roguery, under the apparent sanction of the law; to that extent the law is demoralizing, even in regard to pecuniary integrity. And such cases are, unfortunately, frequent under the English system. If, again, the law, by a misplaced indulgence, protects idleness or prodigality against their natural consequences, or dismisses crime with inadequate penalties, the effect, both on the prudential and on the social virtues, requires no comment. When the law, by its own dispensations and injunctions, establishes injustice between individual and individual; as all laws do which recognize

* Supra, vol. i. p. 131.

any form of slavery; as the laws of all countries do, though not all in the same degree, in respect to the family relations; and as the laws of many countries do, though in still more unequal degrees, as between rich and poor; the effect on the moral sentiments of the people is still more disastrous. But these subjects introduce considerations so much larger and deeper than those of political economy, that I only advert to them in order not to pass wholly unnoticed, things superior in importance to those of which I treat.

CHAPTER IX.

THE SAME SUBJECT CONTINUED.

§ 1. HAVING spoken thus far of the effects produced by the excellences or defects of the general system of the law, I shall now touch upon those resulting from the special character of particular parts of it. As a selection must be made, I shall confine myself to a few leading topics. The portions of the civil law of a country which are of most importance economically, (next to those which determine the *status* of the labourer, as slave, serf, or free,) are those relating to the two subjects of Inheritance and Contract. Of the laws relating to contract, none are more important economically, than the laws of partnership, and those of insolvency. It happens that on all these three points, there is just ground for condemning some of the provisions of the English law. I cannot, therefore, select topics more suitable to be touched upon in the present treatise.

With regard to Inheritance, I have, in an early part of this work, considered the general principles of the subject, and suggested what appear to me to be, in themselves, putting all prejudices apart, the best dispositions which the law could adopt. Freedom of bequest as the general rule, but limited by two things: first, that if there are descendants, who, being unable to provide for themselves, would become burthensome to the state, the equivalent of whatever the state would accord to them should be reserved from the property for their benefit: and secondly, that no one person should be permitted to acquire by inheritance, more than the amount of a moderate independence. In case of intestacy, the whole property to escheat to the state: which should be bound to make a just and reasonable provision for descendants, that is, such a provision as the parent or ancestor ought to have made, their circumstances, capacities, and mode of bringing up being considered.

The laws of inheritance, however, have probably several phases of improvement to go through, before ideas so far removed from present modes of thinking will be taken into serious consideration: and as, among the recognized modes of determining the succession to property, some must be better and others worse, it is necessary to consider which of them deserves the preference. As an intermediate course, therefore, less eligible in itself, but better adapted to existing feelings and ideas, I would recommend the extension to all property, of the present English law of inheritance affecting personal property (freedom of bequest, and, in case of intestacy, equal division): except that no rights should be acknowledged in collaterals, and that the property of those who have neither descendants nor ascendants, and make no will, should escheat to the state.

The laws of existing nations deviate from these maxims in two opposite ways. In England, and most of the countries in which the influence of feudality is still felt in the laws, one of the objects aimed at in respect to land and other immoveable property, is to keep it together in large masses: accordingly, in cases of intestacy, it passes, generally speaking (for the local custom of some places is different), exclusively to the eldest son. And though the rule of primogeniture is not binding on testators, who in England have nominally the power of bequeathing their property as they please, any one proprietor may so exercise this power as to deprive his successors of it, by entailing the property on one particular line of his descendants: which, besides preventing it from passing by inheritance in any other than the prescribed manner, is attended with the incidental consequence of precluding it from being sold; since each successive possessor, having only a life interest in the property, cannot alienate it for a longer period than his own life. In

other countries, such as France, the law, on the contrary, compels division of inheritances; not only, in case of intestacy, sharing the property, both real and personal, equally among all the children, or (if there are no children) among all relatives in the same degree of propinquity; but also not recognizing any power of bequest, or recognizing it over only a limited portion of the property, the remainder being subjected to compulsory equal division.

Neither of these systems, I apprehend, was introduced, or is maintained, in the countries where it exists, from any general considerations of justice, or any foresight of economical consequences, but chiefly from political motives; in the one case to keep up large hereditary fortunes, and a landed aristocracy; in the other, to break these down, and prevent their resurrection. The first object, as an aim of national policy, I conceive to be eminently undesirable: so far as the second is desirable, I have pointed out what seems to me a better mode of attaining it. The merit or demerit, however, of either purpose, belongs to the general science of politics, not to the limited department of that science which is the subject of the present treatise. Each of the two systems is a real and efficient instrument for the purpose intended by it; but each, as it appears to me, achieves that purpose at the cost of much mischief.

§ 2. There are two arguments of an economical character, which are urged in favour of primogeniture. One is, the stimulus applied to the industry and ambition of younger children, by leaving them to be the architects of their own fortunes. This argument was put by Dr. Johnson in a manner more forcible than complimentary to an hereditary aristocracy, when he said, by way of recommendation of primogeniture, that it "makes but one fool in a family." It is curious that a defender of aristocratic institutions should be the person to assert that to inherit such a fortune as takes away any necessity for exertion, is generally fatal to

activity and strength of mind: in the present state of education, however, the proposition, with some allowance for exaggeration, may be admitted to be true. But whatever force there is in the argument, counts in favour of limiting the eldest, as well as all the other children, to a mere provision, and dispensing with even the "one fool" whom Dr. Johnson was willing to tolerate. If unearned riches are so pernicious to the character, one does not see why, in order to withhold the poison from the junior members of a family, there should be no way but to unite all their separate potions, and administer them in the largest possible dose to one selected victim. That it should be necessary to inflict this great evil on the eldest son, from sheer want of knowing what else to do with a large fortune, is surely the most arbitrarily conjured up of all embarrassments.

Some writers, however, look upon the effect of primogeniture in stimulating industry, as depending, not so much upon the poverty of the younger children, as upon the contrast between that poverty and the riches of the elder; thinking it indispensable to the activity and energy of the hive, that there should be a huge drone here and there, to impress the working bees with a due sense of the advantages of honey. "Their inferiority in point of wealth," says Mr. M'Culloch, speaking of the younger children, "and their desire to escape from this lower situation, and to attain to the same level with their elder brothers, inspires them with an energy and vigour they could not otherwise feel. But the advantage of preserving large estates from being frittered down by a scheme of equal division, is not limited to its influence over the younger children of their owners. It raises universally the standard of competence, and gives new force to the springs which set industry in motion. The manner of living among the great landlords is that in which every one is ambitious of being able to indulge; and their habits of expense, though sometimes injurious to themselves, act as powerful incentives to the ingenuity and enterprise of

the other classes, who never think their fortunes sufficiently ample, unless they will enable them to emulate the splendour of the richest landlords; so that the custom of primogeniture seems to render all classes more industrious, and to augment, at the same time, the mass of wealth and the scale of enjoyment*."

The portion of truth, I will not say contained in these observations, but recalled by them, I apprehend to be, that a state of complete equality of fortunes would not be favourable to industry. Speaking of the mass, it is as true of wealth as of most other distinctions—of talent, knowledge, virtue—that those who already have, or think they have, as much of it as any of their neighbours, will seldom greatly exert themselves to acquire more. But it is not therefore necessary that society should provide a set of persons with large fortunes, to fulfil the social duty of standing to be looked at, with envy and admiration, by the aspiring poor. The fortunes which people have acquired for themselves, answer the purpose quite as well, indeed much better; since a person is more powerfully stimulated by the example of somebody who has earned a fortune, than by the mere sight of somebody who possesses one; and the former is necessarily an example of prudence and frugality as well as industry, while the latter much oftener sets an example of profuse expense, which spreads, with pernicious effect, to the very class on whom the sight of riches is supposed to have so beneficial an influence, namely those whose weakness of mind, and taste for ostentation, makes "the splendour of the richest landlords" attract them with the most potent spell. In America there are few or no great hereditary fortunes; yet industrial energy, and the ardour of accumulation, are not supposed to be particularly backward in that part of the world. When a country has once fairly

* *Principles of Political Economy*, ed. 1843, p. 264. There is much more to the same effect in the recent treatise by the same author, "On the Succession to Property vacant by Death."

entered into the industrial career, which is the occupation of the modern, as war was that of the ancient and mediæval world, the desire of acquisition by industry needs no factitious stimulus: the advantages naturally inherent in riches, and the character they assume of a test by which talent and success in life are habitually measured, are an ample security for their being pursued with sufficient intensity and zeal. As to the deeper consideration, that the diffusion of wealth, and not its concentration, is desirable, and that the most wholesome state of society is not that in which immense fortunes are possessed by a few and coveted by all, but that in which the greatest possible numbers possess and are contented with a moderate competency, which all may hope to acquire; I refer to it in this place only to show, how widely separated, on social questions, is the entire mode of thought of the defender of primogeniture, from that which is partially promulgated in the present treatise.

The other economical argument in favour of primogeniture, has especial reference to landed property. It is contended, that the habit of dividing inheritances equally, or with an approach to equality, among children, promotes the subdivision of land into occupations too small to admit of being cultivated in an advantageous manner. This argument, eternally reproduced, has again and again been refuted by English and Continental writers. It proceeds on a supposition entirely at variance with that on which all the theorems of political economy are grounded. It assumes that mankind in general will habitually act in a manner opposed to their immediate and obvious pecuniary interest. For the division of the inheritance does not necessarily imply division of the land; which may be held in common, as is not unfrequently the case in France and Belgium; or may become the property of one of the coheirs, being charged with the shares of the others by way of mortgage; or they may sell it outright, and divide the proceeds. When the division of the land would diminish its productive power, it is the direct interest of the

heirs to adopt some one of these arrangements. Supposing, however, what the argument assumes, that either from legal difficulties or from their own stupidity and barbarism, they would not, if left to themselves, obey the dictates of this obvious interest, but would insist upon cutting up the land bodily into equal parcels, with the effect of impoverishing themselves; this would be an objection to a law such as exists in France, of compulsory division, but can be no reason why testators should be discouraged from exercising the right of bequest in general conformity to the rule of equality, since it would always be in their power to provide that the division of the inheritance should take place without dividing the land itself. That the attempts of the advocates of primogeniture to make out a case by facts against the custom of equal division, are equally abortive, has been shown in a former portion of this work. In all countries, or parts of countries, in which the division of inheritances is accompanied by small holdings, it is because small holdings are the general system of the country, even on the estates of the great proprietors.

Unless a strong case of social utility can be made out for primogeniture, it stands sufficiently condemned by the general principles of justice; being a broad distinction in the treatment of one person and of another, grounded solely on an accident. There is no need, therefore, to make out any case of economical evil *against* primogeniture. Such a case, however, and a very strong one, may be made. It is a natural effect of primogeniture to make the landlords a needy class. The object of the institution, or custom, is to keep the land together in large masses, and this it commonly accomplishes; but the legal proprietor of a large domain is not necessarily the *bonâ fide* owner of the whole income which it yields. It is usually charged, in each generation, with provisions for the other children. It is often charged still more heavily by the imprudent expenditure of the proprietor. Great landowners are generally improvident in their expenses; they

live up to their incomes when at the highest, and if any change of circumstances diminishes their resources, some time elapses before they make up their minds to retrench. Spendthrifts in other classes are ruined, and disappear from society; but the spendthrift landlord usually holds fast to his land, even when he has become a mere receiver of its rents for the benefit of creditors. The same desire to keep up the "splendour" of the family, which gives rise to the custom of primogeniture, indisposes the owners to sell a part in order to set free the remainder; their apparent are therefore habitually greater than their real means, and they are under a perpetual temptation to proportion their expenditure to the former rather than to the latter. From such causes as these, in almost all countries of great landowners, the majority of landed estates are deeply mortgaged; and instead of having capital to spare for improvements, it requires all the increased value of land, caused by a rapid increase of the wealth and population of the country, to preserve the class from being impoverished.

§ 3. To avert this impoverishment, recourse was had to the contrivance of entails, whereby the order of succession was irrevocably fixed, and each holder, having only a life interest, was unable to burthen his successor. The land thus passing, free from debt, into the possession of the heir, the family could not be ruined by the improvidence of its existing representative. The economical evils arising from this disposition of property were partly of the same kind, partly different, but on the whole greater, than those arising from primogeniture alone. The possessor could not now ruin his successors, but he could still ruin himself: he was not at all more likely than in the former case to have the means necessary for improving the property; while, even if he had, he was still less likely to employ them for that purpose, when the benefit was to accrue to a person whom the entail made independent of him, while he had probably

younger children to provide for, in whose favour he could not now charge the estate. While thus disabled from being himself an improver, neither could he sell the estate to somebody who would; since entail precludes alienation. In general he has even been unable to grant leases beyond the term of his own life; "for," says Blackstone, "if such leases had been valid, then, under cover of long leases, the issue might have been virtually disinherited:" and it has been necessary in Great Britain to relax, by statute, the rigour of entails, in order to allow either of long leases, or of the execution of improvements at the expense of the estate. It may be added that the heir of entail, being assured of succeeding to the family property, however undeserving of it, and being aware of this from his earliest years, has much more than the ordinary chances of growing up idle, dissipated, and profligate.

In England the power of entail is more limited by law, than in Scotland and in most other countries where it exists. A landowner can settle his property upon any number of persons successively who are living at the time, and upon one unborn person, on whose attaining the age of twenty-one, the entail expires, and the land becomes his absolute property. An estate may in this manner be transmitted through a son, or a son and grandson, living when the deed is executed, to an unborn child of that grandson. It has been maintained that this power of entail is not sufficiently extensive to do any mischief: in truth, however, it is much larger than it seems. Entails very rarely expire; the first heir of entail, when of age, joins with the existing possessor in resettling the estate, so as to prolong the entail for a further term. Large properties, therefore, are rarely free, for any considerable period, from the restraints of a strict settlement; and English entails are not, in point of fact, much less injurious than those of other countries.

In an economical point of view, the best system of landed property is that in which land is most completely an object of

commerce; passing readily from hand to hand when a buyer can be found to whom it is worth while to offer a greater sum for the land, than the value of the income drawn from it by its existing possessor. This of course is not meant of ornamental property, which is a source of expense, not profit; but only of land employed for industrial uses, and held for the sake of the income which it affords. Whatever facilitates the sale of land, tends to make it a more productive instrument for the community at large; whatever prevents or restricts its sale, subtracts from its usefulness. Now, not only has entail this effect, but primogeniture also. The desire to keep land together in large masses, from other motives than that of promoting its productiveness, often prevents changes and alienations which would increase its efficiency as an instrument.

§ 4. On the other hand, a law which, like the French, restricts the power of bequest to a narrow compass, and compels the equal division of the whole or the greater part of the property among the children, seems to me, though on different grounds, also very seriously objectionable. The only reason for recognizing in the children any right at all to more than a provision, sufficient to launch them into life, and enable them to find a livelihood, is grounded on the expressed or presumed wish of the parent; whose claim to dispose of what is actually his (or her) own, cannot be set aside by any pretensions of others to receive what is not theirs. To control the rightful owner's liberty of gift, by creating in the children a legal right superior to it, is to postpone a real claim to an imaginary one. To this great and paramount objection to the law, numerous secondary ones may be added. Desirable as it is that the parent should treat the children with impartiality, and not make an eldest son or a favourite, impartial division is not always synonymous with equal division. Some of the children may be more capable than others of providing for themselves, or may have fewer wants, or possess other

resources; and impartiality may therefore require that the rule observed should not be one of equality, but of compensation. Even when equality is desirable, it is not precise or pedantic equality. The law, however, must proceed by fixed rules. If one of the coheirs, being of a quarrelsome litigious disposition, stands upon his utmost rights, the law cannot make equitable adjustments; it cannot apportion the property as seems best for the collective interest of the family; if there are several parcels of land, and the heirs cannot agree about their value, the law cannot give a parcel to each, but every separate parcel must be either put up to sale or divided: if there is a residence, or a park or pleasure-ground, which would be destroyed, as such, by subdivision, it must be sold, possibly at a great pecuniary sacrifice, and with the destruction to the whole family of local ties and attachments. But what the law could not do, the parent could. By means of the liberty of bequest, all these points might be determined according to reason and the general interest of the persons concerned; and the spirit of the principle of equal division might be the better observed, because the testator was emancipated from its letter. Finally, it would not then be necessary, as under the compulsory system it is, that the law should interfere authoritatively in the concerns of families, not only on the occurrence of a death, but throughout life, in order to guard against the attempts of parents to frustrate the legal claims of their heirs, under colour of gifts and other alienations *inter vivos*.

In conclusion; all owners of property should, I conceive, have power to dispose by will of every part of it, but not to determine the person who should succeed to it after the deaths of all who were living when the will was made. Under what restrictions it should be allowable to bequeath property to one person for life, with remainder to another person already in existence, is a question belonging to general legislation, not to political economy. Such settlements would be no greater hindrance to alienation than any case of joint

ownership, since the consent of persons actually in existence is all that would be necessary for any new arrangement respecting the property.

§ 5. From the subject of Inheritance I now pass to that of Contracts, and among these, to the important subject of the Laws of Partnership. How much of good or evil depends upon these laws, and how important it is that they should be the best possible, is evident to all who recognize in the extension of the co-operative principle the great economical necessity of modern industry. The progress of the productive arts requiring that many sorts of industrial occupation should be carried on by larger and larger capitals, the productive power of industry must suffer by whatever impedes the formation of large capitals through the aggregation of smaller ones. Capitals of the requisite magnitude, belonging to single owners, do not, in most countries, exist in the needful abundance, and would be still less numerous if the laws favoured the diffusion instead of the concentration of property: while it is most undesirable that all those improved processes, and those means of efficiency and economy in production, which depend on the possession of large funds, should be monopolies in the hands of a few rich individuals, through the difficulties experienced by persons of moderate or small means in associating their capital. Finally, I must repeat my conviction, that the industrial economy which divides society absolutely into two portions, the payers of wages and the receivers of them, the first counted by thousands and the last by millions, is neither fit for, nor capable of, indefinite duration: and the possibility of changing this system for one of combination without dependence, and unity of interest instead of organized hostility, depends altogether upon the future developements of the Partnership principle.

Yet there is scarcely any country whose laws do not throw great, and in most cases, intentional obstacles in the way of

the formation of any numerous partnership. In England it is already a serious discouragement, that all or most differences among partners are, practically speaking, only capable of adjudication by the Court of Chancery: which is often worse than placing such questions out of the pale of all law; since any one of the disputant parties, who is either dishonest or litigious, can involve the others at his pleasure in the endless expense, trouble, and anxiety, which are the unavoidable accompaniments of a prolonged Chancery suit, without their having the power of freeing themselves from the infliction even by breaking up the association. Besides this, it required, until lately, a separate act of the legislature before any joint-stock association could legally constitute itself, and be empowered to act as one body. By a statute passed only a few years ago, this necessity is done away, and the formalities which have been substituted for it are not sufficiently onerous to be very much of an impediment to such undertakings. When a number of persons, whether few or many, freely desire to unite their funds for a common undertaking, not asking any peculiar privilege, nor the power to dispossess any one of property, the law can have no good reason for throwing difficulties in the way of the realization of the project. On compliance with a few simple conditions of publicity, any body of persons ought to have the power of constituting themselves into a joint-stock company, or *société en nom collectif*, without asking leave either of any public officer or of Parliament: and this liberty, in England, they cannot now be fairly said not to have, though they have had it but for a little more than three years. As an association of many partners must practically be under the management of a few, every facility which law can give ought to be afforded to the body for exercising the necessary control and check over those few, whether they be themselves members of the association, or merely its hired servants: and in this point the English system is still at a lamentable distance from the standard of perfection, though less, I believe, owing to

the defects of the law, than to those of the courts of judicature.

§ 6. Whatever facilities, however, English law may give to associations formed on the principles of ordinary partnership, there is one sort of joint-stock association which it absolutely disallows, and which can still be only called into existence by a special act either of the legislature or of the crown. I mean, associations with limited liability.

Associations with limited liability are of two kinds: in one, the liability of all the partners is limited, in the other that of some of them only. The first is the *société anonyme* of the French law, which in England has no other name than that of "chartered company:" meaning thereby a joint-stock company whose shareholders, by a charter from the crown or a special enactment of the legislature, stand exempted from any liability for the debts of the concern, beyond the amount of their subscriptions. This form of association, though unknown to the general law of this country, exists in many particular cases by special *privilegium*. The other species of limited partnership is that known to the French law under the name of *commandite*; of this, which in England is entirely unrecognized and illegal, I shall speak presently.

If a number of persons choose to associate for carrying on any operation of commerce or industry, agreeing among themselves and announcing to those with whom they deal that the members of the association do not undertake to be responsible beyond the amount of the subscribed capital; is there any reason that the law should raise objections to this proceeding, and should impose on them the unlimited responsibility which they disclaim? For whose sake? Not for that of the partners themselves; for it is they whom the limitation of responsibility benefits and protects. It must therefore be for the sake of third parties; namely, those who

may have transactions with the association, and to whom it may run in debt beyond what the subscribed capital suffices to pay. But nobody is obliged to deal with the association; still less is any one obliged to give it unlimited credit. The class of persons with whom such associations have dealings are in general perfectly capable of taking care of themselves, and there seems no reason that the law should be more careful of their interests than they will themselves be; provided no false representation is held out, and they are aware from the first what they have to trust to. The law is warranted in requiring from all joint-stock associations with limited responsibility, not only that the amount of capital on which they profess to carry on business should either be actually paid up or security given for it (if indeed, with complete publicity, such a requirement would be necessary) but also that such accounts should be kept, accessible to individuals, and if needful, published to the world, as shall render it possible to ascertain at any time the existing state of the company's affairs, and to learn whether the capital which is the sole security for the engagements into which they enter, still subsists unimpaired: the fidelity of such accounts being guarded by sufficient penalties. When the law has thus afforded to individuals all practicable means of knowing the circumstances which ought to enter into their prudential calculations in dealing with the company, there seems no more need for interfering with individual judgment in this sort of transactions, than in any other part of the private business of life.

The reason usually urged for such interference is, that the managers of an association with limited responsibility, not risking their whole fortunes in the event of loss, while in case of gain they may profit largely, are not sufficiently interested in exercising due circumspection, and are under the temptation of exposing the funds of the association to improper hazards. Admitting that this is one of the disadvantages of such associations, it is a consideration of more

importance to the shareholders themselves than to third parties; since, with proper securities for publicity, the capital of the association could not be engaged in hazards beyond those ordinarily incident to the business it carries on, without the fact's being known, and becoming the subject of comments by which the credit of the body would be likely to be affected in quite as great a degree as the circumstances would justify. If, under securities for publicity, it were found in practice that companies, formed on the principle of unlimited responsibility, obtained, with equal capital, greater credit, companies with limited liability would be unable to maintain an equal competition with them; and would therefore rarely be formed, unless when such limitation was the only condition on which the necessary amount of capital could be raised: and in that case it would be very unreasonable to say that their formation ought to be prevented.

It may further be remarked, that although, with equality of capital, a company of limited liability offers a somewhat less security to those who deal with it, than one in which every shareholder is responsible with his whole fortune, yet even the weaker of these two securities is in some respects stronger than that which an individual capitalist can afford. In the case of an individual, there is such security as can be founded on his unlimited liability, but not that derived from publicity of transactions, or from a known and large amount of paid-up capital. This topic is well treated in an able paper by M. Coquelin, published in the Revue des Deux Mondes for July 1843*.

"While third parties who trade with individuals," says this writer, "scarcely ever know, except by approximation, and even that most vague and uncertain, what is the amount of capital responsible for the performance of contracts made

* The quotation is from a translation published in an American periodical, Hunt's Merchant's Magazine, for May and June 1845, by Mr. H. C. Carey of Philadelphia, to whose writings I have before had occasion to advert.

with them, those who trade with a *société anonyme* can obtain full information if they seek it, and perform their operations with a feeling of confidence that cannot exist in the other case. Again, nothing is easier than for an individual trader to conceal the extent of his engagements, as no one can know it certainly but himself. Even his confidential clerk may be ignorant of it, as the loans he finds himself compelled to make may not all be of a character to require that they be entered in his day-book. It is a secret confined to himself; one which transpires rarely, and always slowly; one which is unveiled only when the catastrophe has occurred. On the contrary, the *société anonyme* neither can nor ought to borrow, without the fact becoming known to all the world—directors, clerks, shareholders, and the public. Its operations partake, in some respects, of the nature of those of governments. The light of day penetrates in every direction, and there can be no secrets from those who seek for information. Thus all is fixed, recorded, known, of the capital and debts in the case of the *société anonyme*, while all is uncertain and unknown in the case of the individual trader. Which of the two, we would ask the reader, presents the most favourable aspect, or the surest guarantee, to the view of those who trade with them?

"Again, availing himself of the obscurity in which his affairs are shrouded, and which he desires to increase, the private trader is enabled, so long as his business appears prosperous, to produce impressions in regard to his means far exceeding the reality, and thus to establish a credit not justified by those means. When losses occur, and he sees himself threatened with bankruptcy, the world is still ignorant of his condition, and he finds himself enabled to contract debts far beyond the possibility of payment. The fatal day arrives, and the creditors find a debt much greater than had been anticipated, while the means of payment are as much less. Even this is not all. The same obscurity which has served him so well thus far, when desiring to magnify

his capital and increase his credit, now affords him the opportunity of placing a part of that capital beyond the reach of his creditors. It becomes diminished, if not annihilated. It hides itself, and not even legal remedies, nor the activity of creditors, can bring it forth from the dark corners in which it is placed. . . . Our readers can readily determine for themselves if practices of this kind are equally easy in the case of the *société anonyme*. We do not doubt that such things are possible, but we think that they will agree with us that from its nature, its organization, and the necessary publicity that attends all its actions, the liability to such occurrences is very greatly diminished."

The laws of most countries, England included, have erred in a twofold manner with regard to joint-stock companies. While they have been most unreasonably jealous of allowing such associations to exist, especially with limited responsibility, they have generally neglected the enforcement of publicity; the best security to the public against any danger which might arise from this description of partnerships; and a security quite as much required in the case of those associations of the kind in question, which, by an exception from their general practice, they suffered to exist. Even in the instance of the Bank of England, which holds a monopoly from the legislature, and has had partial control over a matter of so much public interest as the state of the circulating medium, it is only within these few years that any publicity at all has been enforced; and the publicity was at first of an extremely incomplete character, though now, for most practical purposes, probably at length sufficient.

§ 7. The other kind of limited partnership which demands our attention, is that in which the managing partner or partners are responsible with their whole fortunes for the engagements of the concern, but have others associated with them who contribute only definite sums, and are not liable for anything beyond, though they participate in the profits

according to any rule which may be agreed on. This is called partnership *en commandite:* and the partners with limited liability, to whom, by the French law, all interference in the management of the concern is interdicted, are known by the name *commanditaires*. Such partnerships are not permitted by English law: whoever shares in the profits is liable for the debts, to as plenary an extent as the managing partner.

For such prohibition no rational defence has ever, so far as I am aware, been made. Even the insufficient reason given against limiting the responsibility of shareholders in a joint-stock company, does not apply here; there being no diminution of the motives to circumspect management, since all who take any part in the direction of the concern are liable with their whole fortunes. To third parties, again, the security is improved by the existence of commandite; since the amount subscribed by commanditaires is all of it available to creditors, the commanditaires losing their whole investment before any creditor can lose anything; while, if instead of becoming partners to that amount, they had lent the sum at an interest equal to the profit they derived from it, they would have shared with the other creditors in the residue of the estate, diminishing *pro rata* the dividend obtained by all. While the practice of commandite thus conduces to the interest of creditors, it is often highly desirable for the contracting parties themselves. The managers are enabled to obtain the aid of a much greater amount of capital than they could borrow on their own security; and persons are induced to aid useful undertakings, by embarking limited portions of capital in them, when they would not, and often could not prudently, have risked their whole fortunes on the chances of the enterprise.

It may perhaps be thought that where due facilities are afforded to joint-stock companies, commandite partnerships are not required. But there are classes of cases to which the commandite principle must always be better adapted than the joint-stock principle. "Suppose," says M. Coquelin,

"an inventor seeking for a capital to carry his invention into practice. To obtain the aid of capitalists, he must offer them a share of the anticipated benefit; they must associate themselves with him in the chances of its success. In such a case, which of the forms would he select? Not a common partnership, certainly;" for various reasons, and especially because it would often be very difficult to find a partner with capital, willing to risk his whole fortune on the success of another person's invention. "Neither would he select the *société anonyme*," or any other form of joint-stock company, "in which he might be superseded as manager. He would stand, in such an association, on no better footing than any other shareholder, and he might be lost in the crowd; whereas, the association existing, as it were, by and for him, the management would appear to belong to him as a matter of right. Cases occur in which a merchant or a manufacturer, without being precisely an inventor, has undeniable claims to the management of an undertaking, from the possession of qualities peculiarly calculated to promote its success. So great, indeed," continues M. Coquelin, "is the necessity, in many cases, for the limited partnership, that it is difficult to conceive how we could dispense with, or replace it:" and in reference to his own country he is probably in the right.

Where there is so great a readiness as in England, on the part of the public, to form joint-stock associations, even without the encouragement of a limitation of responsibility; commandite partnership, though its prohibition is in principle quite indefensible, cannot be deemed to be, in a merely economical point of view, of the imperative necessity which M. Coquelin ascribes to it. Yet the inconveniences are not small, which arise indirectly from those provisions of the law by which every one who shares in the profits of a concern is subject to the full liabilities of an unlimited partnership. It is impossible to say how many, or what useful modes of combination are rendered impracticable by this state of the law. It is sufficient for its condemnation, that, unless in some way

relaxed, it is inconsistent with the system of which M. Leclaire has set so useful an example, the payment of wages in part by a percentage on profits; in other words, the association of the operatives as virtual partners with the capitalist.

It is, above all, with reference to the improvement and elevation of the working classes, that complete freedom in the conditions of partnership is indispensable. It is only by combining, that the small means of many can be on anything like an equality of advantage with the great fortunes of a few. The liberty of association is not important solely for its examples of success, but fully as much so for the sake of attempts which would not succeed, but by their failure would give instruction more impressive than can be afforded by anything short of actual experience. Socialism, Communism, every theory of social improvement, the worth of which is capable of being brought to an experimental test, should be permitted, and even encouraged, to submit itself to that test. From such experiments the aspiring among the working classes would derive lessons, which they would be slow to learn from the teaching of persons supposed to have interests and prejudices adverse to their good; and would discover, at no cost to society, the limits of the practical worth of their ideas of social regeneration, as applicable to the present stage of human advancement.

The French law of partnership is superior to the English in permitting commandite, and superior in having no such unmanageable instrument as the Court of Chancery, all cases arising from commercial transactions being adjudicated in a comparatively cheap and expeditious manner by a tribunal of merchants. In other respects the French system is far worse than the English. A company with limited responsibility cannot be formed without the express authorization of the department of government called the *Conseil d'Etat;* a body of administrators, generally entire strangers to industrial transactions, who have no interest in promoting enterprises,

and are apt to think that the purpose of their institution is to restrain them; whose consent cannot in any case be obtained without an amount of time and labour which is a very serious hindrance to the commencement of an enterprize, while the extreme uncertainty of obtaining that consent at all, is a great discouragement to capitalists who would be willing to subscribe. In regard to joint-stock companies without limitation of responsibility, which in England exist in such numbers, and are formed with such facility, as to reduce (in a merely economical point of view) the jealousy which the law entertains of the principle of limitation, to the rank of a very minor inconvenience; such associations cannot, in France, exist at all, for in cases of unlimited partnership the French law does not permit the division of the capital into transferable shares.

The best existing laws of partnership appear to be those of the New England States. According to Mr. Carey*, "no where is association so little trammelled by regulations as in New England; the consequence of which is, that it is carried to a greater extent there, and particularly in Massachusetts and Rhode Island, than in any other part of the world. In these states, the soil is covered with *compagnies anonymes*—chartered companies—for almost every conceivable purpose Every town is a corporation for the management of its roads, bridges, and schools; which are, therefore, under the direct control of those who pay for them, and are consequently well managed. Academies and churches, lyceums and libraries, saving-fund societies, and trust companies, exist in numbers proportioned to the wants of the people, and all are corporations. Every district has its local bank, of a size to suit its wants, the stock of which is owned by the small capitalists of the neighbourhood, and managed by themselves; the consequence of which is, that in no part of the world is the system of banking so perfect—so little liable to vibration in the amount of loans—the necessary effect of which is, that in

* In a note appended to his translation of M. Coquelin's paper.

none is the value of property so little affected by changes ir the amount or value of the currency resulting from the movements of *their own* banking institutions. In the two states to which we have particularly referred, they are almost two hundred in number. Massachusetts, alone, offers to our view fifty-three insurance offices, of various forms, scattered through the state, and all incorporated. *Factories are incorporated, and are owned in shares;* and *every one that has any part in the management* of their concerns, from the purchase of the raw material to the sale of the manufactured article, *is a part owner;* while every one employed in them has a prospect of becoming one, by the use of prudence, exertion, and economy. Charitable associations exist in large numbers, and all are incorporated. *Fishing vessels are owned in shares* by those who navigate them; and *the sailors of a whaling ship depend* in a great degree, if not altogether, *upon the success of the voyage for their compensation.* Every master of a vessel, trading in the Southern Ocean, is a part owner, and the interest he possesses is a strong inducement to exertion and economy, by aid of which the people of New England are rapidly driving out the competition of other nations for the trade of that part of the world. Wherever settled, they exhibit the same tendency to combination of action. In New York they are the chief owners of *the lines of packet ships*, which *are divided into shares, owned by the shipbuilders, the merchants, the master, and the mates;* which last generally acquire the means of becoming themselves masters, and to this is due their great success. The system is the most perfectly democratic of any in the world. *It affords to every labourer, every sailor, every operative, male or female, the prospect of advancement;* and its results are precisely such as we should have reason to expect. In no part of the world are talent, industry, and prudence, so certain to be largely rewarded."

To this state might England also be brought, but not without giving the same plenitude of liberty to voluntary association. The cases of insolvency and fraud on the part of

chartered companies in America, which have caused so much loss and so much scandal in Europe, did not occur in the part of the Union to which this extract refers, but in other States, in which the right of associating is much more fettered by legal restrictions, and in which, accordingly, joint-stock associations are not comparable in number or variety to those of New England. Mr. Carey adds, "A careful examination of the systems of the several states can scarcely, we think, fail to convince the reader of the advantage resulting from permitting men to determine among themselves the terms upon which they will associate, and allowing the associations that may be formed to contract with the public as to the terms upon which they will trade together, whether of the limited or unlimited liability of the partners;" and I concur in thinking that to this conclusion, science and legislation must ultimately come.

§ 8. I proceed to the subject of Insolvency Laws.

Good laws on this subject are important, first and principally, on the score of public morals; which are on no point more under the influence of the law, for good and evil, than in a matter belonging so pre-eminently to the province of law as the preservation of pecuniary integrity. But the subject is also, in a merely economical point of view, of great importance. First, because the economical well-being of a people, and of mankind, depends in an especial manner upon their being able to trust each other's engagements. Secondly, because one of the risks, or expenses, of industrial operations is the risk or expense of what are commonly called bad debts, and every saving which can be effected in this liability is a diminution of cost of production; by dispensing with an item of outlay which in no way conduces to the desired end, and which must be paid for either by the consumer of the commodity, or from the general profits of capital, according as the burthen is peculiar or general.

The laws and practice of nations on this subject have

almost always been in extremes. The ancient laws of most countries have been all severity to the debtor. They have invested the creditor with a power of coercion, more or less tyrannical, which he might use against his insolvent debtor, either to extort the surrender of hidden property, or to obtain satisfaction of a vindictive character, which might console him for the non-payment of the debt. This arbitrary power has extended, in some countries, to making the insolvent debtor serve the creditor as his slave; in which plan there were some grains of common sense, since it might possibly be regarded as a scheme for making him work out the debt by his labour. In England, the coercion assumed the milder form of ordinary imprisonment. The one and the other were the barbarous expedients of a rude age, repugnant to justice as well as to humanity. Unfortunately the reform of them, like that of the criminal law generally, has been taken in hand as an affair of humanity only, not of justice: and the modish humanity of the present time, which is essentially a thing of one idea, (and is indeed little better than a timid shrinking from the infliction of anything like pain, next neighbour to the cowardice which shrinks from necessary endurance of it,) has in this as in other cases, gone into a violent reaction against the ancient severity, and sees in the fact of having lost or squandered other people's property, a peculiar title to indulgence. Everything in the law which attached disagreeable consequences to that fact, has been gradually relaxed, and much of it entirely got rid of. Because insolvency was formerly treated as if it were necessarily a crime, everything is now done to make it, if possible, not even a misfortune.

The indulgence of the present laws to those who have made themselves unable to pay their just debts, is usually defended, on the plea that the sole object of the law should be, in case of insolvency, not to coerce the person of the debtor, but to get at his property, and distribute it fairly among the creditors. Assuming that this is and ought to be the sole object, that object, in the present state of the law, is not

atttained. Imprisonment at the discretion of a creditor was really a powerful engine for extracting from the debtor any property which he had concealed or otherwise made away with. In depriving creditors of this instrument, the law has not furnished them with any sufficient equivalent. And it is seldom difficult for a dishonest debtor, by an understanding with one or more of his creditors, or by means of pretended creditors set up for the purpose, to abstract a part, perhaps the greatest part, of his assets, from the general fund, through the forms of the law itself. The facility and frequency of such frauds is a subject of much complaint, and their prevention demands a vigorous effort of the legislature, under the guidance of judicious persons practically conversant with the subject.

But the doctrine, that the law has done all that ought to be expected from it, when it has put the creditors in the possession of the property of an insolvent, is in itself a totally inadmissible piece of spurious humanity. It is the business of law to prevent wrong-doing, and not simply to patch up the consequences of it when it has been committed. The law is bound to take care that insolvency shall not be a good pecuniary speculation; that men shall not have the privilege of hazarding other people's property without their knowledge or consent, taking the profits of the enterprise if it is successful, and if it fails, throwing the loss upon the lawful owners; that they shall not find it answer to make themselves unable to pay their just debts, by spending the money of their creditors in personal indulgence. The humanitarians do not deny that what is technically called fraudulent bankruptcy, the false pretence of inability to pay, may reasonably, when detected, be subject to punishment. But does it follow that insolvency is not the consequence of misconduct because the inability to pay may be real? If a man has been a spendthrift, or a gambler, with property on which his creditors had a prior claim, shall he pass scot-free because the mischief is consummated and the money gone? Is there

any very material difference between this conduct, and those other kinds of dishonesty which go by the names of fraud and embezzlement?

Such cases are not a minority, but a large majority among insolvencies. The statistics of bankruptcy prove the fact. "By far the greater part of all insolvencies arise from notorious misconduct; the proceedings of the Insolvent Debtors Court and of the Bankruptcy Court will prove it. Excessive and unjustifiable overtrading, or most absurd speculation in commodities, merely because the poor speculator 'thought they would get up,' but why he thought so he cannot tell; speculations in hops, in tea, in silk, in corn—things with which he is altogether unacquainted; wild and absurd investments in foreign funds, or in joint-stocks: these are among the most innocent causes of bankruptcy*." The experienced and intelligent writer from whom I quote, corroborates his assertion by the testimony of several of the official assignees of the Bankruptcy Court. One of them says, "As far as I can collect from the books and documents furnished by the bankrupts, it seems to me that" in the whole number of cases which occurred during a given time in the court to which he was attached, "fourteen have been ruined by speculations in things with which they were unacquainted; three by neglected book-keeping; ten by trading beyond their capital and means, and the consequent loss and expense of accommodation-bills; forty-nine by expending more than they could reasonably hope their profits would be, though their business yielded a fair return; none by any general distress, or the falling off of any particular branch of trade." Another of these officers says, "The new Court has been open upwards of eighteen months, during which period fifty-two cases of bankruptcy have come under my care. It is my opinion that thirty-two of these have arisen from an

* From a volume published in 1845, entitled, "Credit the Life of Commerce," by Mr. J. H. Elliott.

imprudent expenditure, and five partly from that cause, and partly from a pressure on the business in which the bankrupts were employed. Fifteen I attribute to improvident speculations, combined in many instances with an extravagant mode of life."

To these citations the author adds the following statements from his personal means of knowledge, which are considerable. "Many insolvencies are produced by tradesmen's indolence; they keep no books, or at least imperfect ones, which they never balance; they never take stock; they employ servants, if their trade be extensive, whom they are too indolent even to supervise, and then become insolvent. It is not too much to say, that one-half of all the persons engaged in trade, even in London, never take stock at all: they go on year after year without knowing how their affairs stand, and at last, like the child at school, they find to their surprise, but one halfpenny left in their pocket. I will venture to say that not one-fourth of all the persons in the provinces, either manufacturers, tradesmen, or farmers, ever take stock; nor in fact does one-half of them ever keep account-books, deserving any other name than memorandum books. I know sufficient of the concerns of five hundred small tradesmen in the provinces, to be enabled to say, that not one-fifth of them ever take stock, or keep even the most ordinary accounts. I am prepared to say of such tradesmen, from carefully-prepared tables, giving every advantage where there has been any doubt as to the causes of their insolvency, that where nine happen from extravagance or dishonesty, one" at most "may be referred to misfortune alone*."

Is it rational to expect among the trading classes any high sense of justice, honour, or integrity, when the law enables men who act in this manner to shuffle off the consequences of their misconduct upon those who have been so unfortunate as to trust them; and practically proclaims that

* Pp. 50-1.

it looks upon insolvency thus produced, as a "misfortune," not an offence?

It is, of course, not denied, that insolvencies do arise from causes beyond the control of the debtor, and that, in many more cases, his culpability is not of a high order; and the law ought to make a distinction in favour of such cases, but not without a searching investigation; nor should the case ever be let go without having ascertained, in the most complete manner practicable, not the fact of insolvency only, but the cause of it. To have been trusted with money or money's worth, and to have lost or spent it, is *prima facie* evidence of something wrong: and it is not for the creditor to prove, which he cannot do in one case out of ten, that there has been criminality, but for the debtor to rebut the presumption, by laying open the whole state of his affairs, and shewing either that there has been no misconduct, or that the misconduct has been of an excusable kind. If he fail in this, he ought never to be dismissed without a punishment proportioned to the degree of blame which seems justly imputable to him; which punishment, however, might be shortened or mitigated in proportion as he appeared likely to exert himself in repairing the injury done.

It is a common argument with those who approve a relaxed system of insolvency laws, that credit, except in the great operations of commerce, is an evil; and that to deprive creditors of legal redress is a judicious means of preventing credit from being given. That which is given by retail dealers to unproductive consumers is, no doubt, to the excess to which it is carried, a considerable evil. This, however, is only true of large, and especially of long, credits; for there is credit whenever goods are not paid for before they quit the shop, or, at least, the custody of the seller; and there would be much inconvenience in putting an end to this sort of credit. But a large proportion of the debts on which insolvency laws take effect, are those due by small tradesmen to the dealers who supply them: and on no class of debts

does the demoralization occasioned by the present state of the law, operate more perniciously. These are commercial credits, which no one wishes to see curtailed; their existence is of great importance to the general industry of the country, and to numbers of honest well-conducted persons of small means, to whom it would be a grievous injury that they should be prevented from obtaining the accommodation they need, and would not abuse, through the omission of the law to provide just remedies against dishonest or reckless borrowers.

But although it were granted that retail transactions, on any footing but that of ready money payment, are an evil, and their entire suppression a fit object for legislation to aim at; a worse mode of compassing that object could scarcely be invented, than to permit those who have been trusted by others to cheat and rob them with impunity. The law does not select the vices of mankind as the appropriate instrument for inflicting chastisement on the comparatively innocent: when it seeks to discourage any course of action, it does so by applying inducements of its own, not by outlawing those who act in the manner it deems objectionable, and letting loose the predatory instincts of the worthless part of mankind to feed upon them. If a man has committed murder, the law puts him to death; but it does not promise impunity to anybody who may kill him for the sake of taking his purse. The offence of believing another's word, even rashly, is not so heinous that, for the sake of discouraging it, the spectacle should be brought home to every door, of triumphant rascality, with the law on its side, mocking the victims it has made. This pestilent example is already very widely exhibited since the relaxation of the Insolvency laws. It is idle to expect that, even by absolutely depriving creditors of all legal redress, the kind of credit which is considered objectionable would really be very much checked. Rogues and swindlers are still an exception among mankind, and people will go on trusting each other's promises. Large dealers, in

abundant business, would refuse credit, as many of them already do: but in the eager competition of a great town, what can be expected from the tradesman to whom a single customer is of importance, the beginner, perhaps, who is striving to get into business? He will take the risk, even if it were still greater; he is ruined if he cannot sell his goods, and he can but be ruined if he is defrauded. Nor does it avail to say, that he ought to make proper inquiries, and ascertain the character of those to whom he supplies goods on trust. In some of the most flagrant cases of profligate debtors which have come before the Bankruptcy Court, the swindler had been able to give, and had given, excellent references*.

* The following extracts from the French Code de Commerce, (the translation is that of Mr. Fane), show the great extent to which the just distinctions are made, and the proper investigations provided for, by French law. The word *banqueroute*, which can only be translated by bankruptcy, is, however, confined in France to *culpable* insolvency, which is distinguished into *simple* bankruptcy and *fraudulent* bankruptcy. The following are cases of simple bankruptcy:—

"Every insolvent who, in the investigation of his affairs, shall appear chargeable with one or more of the following offences, shall be proceeded against as a simple bankrupt.

"If his house expenses, which he is bound to enter regularly in his day-book, appear excessive.

"If he has spent considerable sums at play, or in operations of pure hazard.

"If it shall appear that he has borrowed largely, or resold merchandize at a loss, or below the current price, after it appeared by his last account-taking that his debts exceeded his assets by one-half.

"If he has issued negotiable securities to three times the amount of his available assets, according to his last account-taking.

"The following *may* also be proceeded against as simple bankrupts:—

"He who has not declared his own insolvency in the manner prescribed by law:

"He who has not come in and surrendered within the time limited, having no legitimate excuse for his absence:

"He who either produces no books at all, or produces such as have been irregularly kept, and this although the irregularities may not indicate fraud."

The penalty for "simple bankruptcy" is imprisonment for a term of not less than one month, nor more than two years. The following are cases of fraudulent brankruptcy, of which the punishment is *travaux forcés*, (the gallies) for a term:—

"If he has attempted to account for his property by fictitious expenses and losses, or if he does not fully account for all his receipts:

"If he has fraudulently concealed any sum of money or any debt due to him, or any merchandize or other moveables:

"If he has made fraudulent sales or gifts of his property:

"If he has allowed fictitious debts to be proved against his estate:

"If he has been entrusted with property, either merely to keep, or with special directions as to its use, and has nevertheless appropriated it to his own use:" (for such acts of peculation by trustees there is generally in England only a civil remedy, and that too through the Court of Chancery:)

"If he has purchased real property in a borrowed name:

"If he has concealed his books.

"The following *may* also be proceeded against in a similar way:—

"He who has not kept books, or whose books shall not exhibit his real situation as regards his debts and credits.

"He who, having obtained a protection (*sauf-conduit*), shall not have duly attended."

These various provisions relate only to commercial insolvency. The laws in regard to ordinary debts are considerably more rigorous to the debtor.

CHAPTER X.

OF INTERFERENCES OF GOVERNMENT GROUNDED ON ERRONEOUS THEORIES.

§ 1. From the necessary functions of government, and the effects produced on the economical interests of society by their good or ill discharge, we proceed to the functions which belong to what I have termed the optional class; those which are sometimes assumed by governments and sometimes not, and which it is not unanimously admitted that they ought to exercise.

Before entering on the general principles of the question, it will be advisable to clear from our path all those cases, in which government interference works ill, because grounded on false views of the subject interfered with. Such cases have no connection with any theory respecting the proper limits of interference. There are some things with which governments ought not to meddle, and other things with which they ought; but whether right or wrong in itself, the interference must work for ill, if government, not understanding the subject which it meddles with, meddles to bring about a result which would be mischievous. We will therefore begin by passing in review various false theories, which have from time to time formed the ground of acts of government more or less economically injurious.

Former writers on political economy have found it needful to devote much trouble and space to this department of their subject. It has now happily become possible, at least in our own country, greatly to abridge this purely negative part of our discussions. The false theories of political economy which have done so much mischief in times past, are entirely discredited among all who have not lagged behind

the general progress of opinion; and few of the enactments which were once grounded on those theories still help to deform the statute-book. As the principles, on which their condemnation rests, have been fully set forth in other parts of this treatise, we may here content ourselves with a few brief indications.

Of these false theories, the most notable is the doctrine of Protection to Native Industry; a phrase meaning the prohibition, or the discouragement by heavy duties, of such foreign commodities as are capable of being produced at home. If the theory involved in this system had been correct, the practical conclusions grounded on it would not have been unreasonable. The theory was, that to buy things produced at home was a national benefit, and the introduction of foreign commodities, generally a national loss. It being at the same time evident that the interest of the consumer is to buy foreign commodities in preference to domestic whenever they are either cheaper or better, the interest of the consumer appeared in this respect to be contrary to the public interest: he was certain, if left to his own inclinations, to do what according to the theory was injurious to the public.

It was shewn, however, in our analysis of the effects of international trade, as it had often been shewn by former writers, that the importation of foreign commodities, in the common course of traffic, never takes place, except when it is, economically speaking, a national good, by causing the same amount of commodities to be obtained at a smaller cost of labour and capital to the country. To prohibit, therefore, this importation, or impose duties which prevent it, is to render the labour and capital of the country less efficient in production than they would otherwise be; and compel a waste, of the difference between the labour and capital necessary for the home production of the commodity, and that which is required for producing the things with which it can be purchased from abroad. The amount of national loss thus occasioned is measured by the excess of the price at which the com-

modity is produced, over that at which it could be imported. In the case of manufactured goods, the whole difference between the two prices is absorbed in indemnifying the producers for waste of labour, or of the capital which supports that labour. Those who are supposed to be benefited, namely the makers of the protected articles, (unless they form an exclusive company, and have a monopoly against their own countrymen as well as against foreigners,) do not obtain higher profits than other people. All is sheer loss, to the country as well as to the consumer. When the protected article is a product of agriculture—the waste of labour not being incurred on the whole produce, but only on what may be called the last instalment of it—the extra price is only in part an indemnity for waste, the remainder being a tax paid to the landlords.

The restrictive and prohibitory policy was originally grounded on what is called the Mercantile System, which representing the advantage of foreign trade to consist solely in bringing money into the country, gave artificial encouragement to exportation of goods, and discountenanced their importation. The only exceptions to the system were those required by the system itself. The materials and instruments of production were the subjects of a contrary policy, directed however to the same end; they were freely imported, and not permitted to be exported, in order that manufacturers, being more cheaply supplied with the requisites of manufacture, might be able to sell cheaper, and therefore to export more largely. For a similar reason, importation was permitted and even favoured, when confined to the productions of countries which were supposed to take from us still more than we took from them, thus enriching the country by a favourable balance of trade. As part of the same system, colonies were founded, for the supposed advantage of compelling them to buy our commodities, or at all events not to buy those of any other country: in return for which restriction, we were generally willing to come under an equivalent obligation with respect

to the staple productions of the colonists. The consequences of the theory were pushed so far, that it was not unusual even to give bounties on exportation, and induce foreigners to buy from us rather than from other countries, by a cheapness which we artificially produced, by paying part of the price for them, out of our own taxes. This is a stretch beyond the point yet reached by any private tradesman in his competition for business. No shopkeeper, I should think, ever made a practice of bribing customers by selling goods to them at a permanent loss, making it up to himself from other funds in his possession.

The principle of the Mercantile Theory is now given up even by writers and governments who still cling to the restrictive system. Whatever hold that system has over men's minds, independently of the private interests which would be exposed to real or apprehended loss by its abandonment, is derived from fallacies other than the old notion of the benefits of heaping up money in the country. The most effective of these is the specious plea, of employing our own countrymen and our national industry, instead of feeding and supporting the industry of foreigners. The answer to this, from the principles laid down in former chapters, is evident. Without reverting to the fundamental theorem discussed in an early part of the present treatise*, respecting the nature and sources of employment for labour; it is sufficient to say, what has usually been said by the advocates of free trade, that the alternative is not between employing our own country-people and foreigners, but between employing one class and another of our own country-people. The imported commodity is always paid for, directly or indirectly, with the produce of our own industry: that industry being at the same time rendered more productive, since with the same labour and outlay we are enabled to possess ourselves of a greater quantity of the article. Those who have not

* Supra, vol. i., pp. 97 et seqq.

well considered the subject, are apt to suppose that our exporting an equivalent in our own produce, for the foreign articles we consume, depends on contingencies; on the consent of foreign countries to make some corresponding relaxation of their own restrictions, or on the question whether those from whom we buy, are induced by that circumstance to buy more from us; and that if these things, or things equivalent to them, do not happen, the payment must be made in money. Now, in the first place, there is nothing more objectionable in a money payment than in payment by any other medium, if the state of the market makes it the most advantageous remittance; and the money itself was first acquired, and would again be replenished, by the export of an equivalent value of our own products. But in the next place, a very short interval of paying in money would so lower prices, as either to stop a part of the importation, or raise up a foreign demand for our produce, sufficient to pay for the imports. I grant that this disturbance of the equation of international demand would be in some degree to our disadvantage, in the purchase of other imported articles; and that a country which prohibits some foreign commodities, does, *cæteris paribus*, obtain those which it does not prohibit, at a less price than it would otherwise have to pay. To express the same thing in other words; a country which destroys or prevents altogether certain branches of foreign trade, thereby annihilating a general gain to the world, which would be shared in some proportion between itself and other countries—does, in some circumstances, draw to itself, at the expense of foreigners, a larger share than would else belong to it of the gain arising from that portion of its foreign trade which it suffers to subsist. But even this it can only be enabled to do, if foreigners do not maintain equivalent prohibitions or restrictions against its commodities. In any case, the justice or expediency of destroying one of two gains, in order to engross a rather larger share of the other, does not require much discussion: the gain, too, which is destroyed, being, in proportion to the

magnitude of the transactions, the larger of the two, since it is the one which capital, left to itself, is supposed to seek by preference.

Defeated as a general theory, the Protectionist doctrine finds support in some particular cases, from considerations which, when really in point, involve greater interests than mere saving of labour; the interests of national subsistence and of national defence. The discussions on the Corn Laws have familiarized everybody with the plea, that we ought to be independent of foreigners for the food of the people; and the navigation laws are grounded, in theory and profession, on the necessity of keeping up a "nursery of seamen" for the navy. On this last subject I at once admit, that the object is worth the sacrifice; and that a country exposed to invasion by sea, if it cannot otherwise have sufficient ships and sailors of its own to secure the means of manning on an emergency an adequate fleet, is quite right in obtaining those means, even at some economical sacrifice in point of cheapness of transport. When the English navigation laws were enacted, the Dutch, from their maritime skill and their low rate of profit at home, were able to carry for other nations, England included, at cheaper rates than those nations could carry for themselves: which placed all other countries at a great comparative disadvantage in obtaining experienced seamen for their ships of war. The Navigation Laws, by which this deficiency was remedied, and at the same time a blow struck against the maritime power of a nation with which England was then frequently engaged in hostilities, were probably, though economically disadvantageous, politically expedient. But English ships and sailors can now navigate as cheaply as those of any other country; maintaining at least an equal competition with the other maritime nations even in their own trade. The ends which may once have justified Navigation Laws, require them no longer, and there seems no reason for maintaining this invidious exception to the general rule of free trade.

With regard to subsistence, the plea of the Protectionists has been so often and so triumphantly met, that it requires little notice here. That country is the most steadily as well as the most abundantly supplied with food, which draws its supplies from the largest surface. It is ridiculous to found a general system of policy on so chimerical a danger as that of being at war with all the nations of the world at once; or to suppose that, even if inferior at sea, a whole country could be blockaded like a town, or that the growers of food in other countries would not be as anxious not to lose an advantageous market, as we should be not to be deprived of their corn. On the subject, however, of subsistence, there is one point which deserves more special consideration. In cases of actual or apprehended scarcity, many countries of Europe are accustomed to stop the exportation of food. Is this, or not, sound policy? There can be no doubt that in the present state of international morality, a people cannot, any more than an individual, be blamed for not starving itself to feed others. But if the greatest amount of good to mankind on the whole, were the end aimed at in the maxims of international conduct, such collective churlishness would certainly be condemned by them. Suppose that in ordinary circumstances the trade in food were perfectly free, so that the price in one country could not habitually exceed that in any other by more than the cost of carriage, together with a moderate profit to the importer. A general scarcity ensues, affecting all countries, but in unequal degrees. If the price rose in one country more than in others, it would be a proof that in that country the scarcity was severest, and that by permitting food to go freely thither from any other country, it would be spared from a less urgent necessity to relieve a greater. When the interests, therefore, of all countries are considered, free exportation is desirable. To the exporting country considered separately, it may, at least on the particular occasion, be an inconvenience: but taking into account that the country which is now the giver, will in some future season be the receiver, and the one that is benefited by the freedom, I cannot but think that even to the apprehension of food-rioters it might be made apparent, that in such cases they should do to others what they would wish done to themselves.

In countries in which the system of Protection is declining, but not yet wholly given up, such as the United States, a doctrine has come into notice which is a sort of compromise between free-trade and restriction, namely, that protection for protection's sake is improper, but that there is nothing objectionable in having as much protection as may incidentally result from a tariff framed solely for revenue. Even in England, regret is sometimes expressed that a "moderate fixed duty" was not preserved on corn, on account of the revenue it would yield. Independently, however, of the general impolicy of taxes on the necessaries of life, this doctrine overlooks the fact, that revenue is received only on the quantity imported, but that the tax is paid on the entire quantity consumed. To make the public pay much that the treasury may receive a little, is no eligible mode of obtaining a revenue. In the case of manufactured articles the doctrine involves a palpable inconsistency. The object of the duty as a means of revenue, is inconsistent with its affording, even incidentally, any protection. It can only operate as protection in so far as it prevents importation; and to whatever degree it prevents importation, it affords no revenue.

The only case in which, on mere principles of political economy, protecting duties can be defensible, is when they are imposed temporarily (especially in a young and rising nation) in hopes of naturalizing a foreign industry, in itself perfectly suitable to the circumstances of the country. The superiority of one country over another in a branch of production, often arises only from having begun it sooner. There may be no inherent advantage on one part, or disadvantage on the other, but only a present superiority of acquired skill and experience. A country which has this skill

and experience yet to acquire, may in other respects be better adapted to the production than those which were earlier in the field: and besides, it is a just remark, that nothing has a greater tendency to promote improvements in any branch of production, than its trial under a new set of conditions. But it cannot be expected that individuals should, at their own risk, or rather to their certain loss, introduce a new manufacture, and bear the burden of carrying it on, until the producers have been educated up to the level of those with whom the processes are traditional. A protecting duty, continued for a reasonable time, will sometimes be the least inconvenient mode in which the nation can tax itself for the support of such an experiment. But the protection should be confined to cases in which there is good ground of assurance that the industry which it fosters will after a time be able to dispense with it; nor should the domestic producers ever be allowed to expect that it will be continued to them, beyond the time strictly necessary for a fair trial of what they are capable of accomplishing.

There is only one part of the Protectionist scheme which requires any further notice: its policy towards colonies, and foreign dependencies; that of compelling them to trade exclusively with the dominant country. A country which thus secures to itself an extra foreign demand for its commodities, undoubtedly gives itself some advantage in the distribution of the general gains of the commercial world. Since, however, it causes the industry and capital of the colony to be diverted from channels, which are proved to be the most productive, inasmuch as they are those into which industry and capital spontaneously tend to flow; there is a loss, on the whole, to the productive powers of the world, and the mother country does not gain so much as she makes the colony lose. If, therefore, the mother country refuses to acknowledge any reciprocity of obligation, she imposes a tribute on the colony in an indirect mode, greatly more oppressive and injurious than the direct. But if, with a more equitable spirit, she

submits herself to corresponding restrictions for the benefit of the colony, the result of the whole transaction is the ridiculous one, that each party loses much, in order that the other may gain a little.

§ 2. Next to the system of Protection, among mischievous interferences with the spontaneous course of industrial transactions, may be noticed certain interferences with contracts. One instance is that of the Usury Laws. These originated in a religious prejudice against receiving interest on money, derived from that fruitful source of mischief in modern Europe, the attempted adaptation to Christianity of doctrines and precepts drawn from the Jewish law. In Mahomedan nations the receiving of interest is formally interdicted, and rigidly abstained from; and Sismondi has noticed, as one among the causes of the industrial inferiority of the Catholic, compared with the Protestant parts of Europe, that the Catholic church in the middle ages gave its sanction to the same prejudice, which subsists, impaired but not destroyed, wherever that religion is acknowledged. Where law or conscientious scruples prevent lending at interest, the capital which belongs to persons not in business is lost to productive purposes, or can be applied to them only in peculiar circumstances of personal connexion, or by a subterfuge. Industry is thus limited to the capital of the undertakers, and to what they can borrow from persons not bound by the same laws or religion as themselves. In Mussulman countries the bankers and money dealers are either Hindoos, Armenians, or Jews.

In more improved countries, legislation no longer discountenances the receipt of an equivalent for money lent; but it everywhere interferes with the free agency of the lender and borrower, by fixing a legal limit to the rate of interest, and making the receipt of more than the appointed maximum a penal offence. This restriction, though approved by Adam Smith, has been condemned by all enlightened persons since

the triumphant onslaught made upon it by Bentham in his "Letters on Usury," which may still be referred to as the best extant writing on the subject.

Legislators may enact and maintain Usury Laws from one of two motives: ideas of public policy, or concern for the interest of the parties to the contract; in this case, of one party only, the borrower. As a matter of policy, the notion may possibly be, that it is for the general good that interest should be low. It is for the good certainly of borrowers. For preferring, however, their advantage to that of lenders, it would be difficult to give any better reason than that in most countries the governing classes are borrowers. It is besides a misapprehension of the causes which influence commercial transactions, to suppose that the rate of interest is really made lower by law, than it would be made by the spontaneous play of supply and demand. If the competition of borrowers, left unrestrained, would raise the rate of interest to six per cent, this proves that at five there would be a greater demand for loans, than there is capital in the market to supply. If the law in these circumstances permits no interest beyond five per cent, there will be some lenders, who not choosing to disobey the law, and not being in a condition to employ their capital otherwise, will content themselves with the legal rate: but others, finding that in a season of pressing demand, more may be made of their capital by other means than they are permitted to make by lending it, will not lend it at all; and the loanable capital, already too small for the demand, will be still further diminished. Of the disappointed candidates there will be many at such periods, who must have their necessities supplied at any price, and these will readily find a third section of lenders, who will not be averse to join in a violation of the law, either by circuitous transactions, partaking of the nature of fraud, or by relying on the honour of the borrower. The extra expense of the roundabout mode of proceeding, and an equivalent for the risk of non-payment and of legal penalties,

must be paid by the borrower, over and above the extra interest which would at any rate have been required of him by the general state of the market. The laws which were intended to lower the price paid by him for pecuniary accommodation, end thus in greatly increasing it. These laws have also a directly demoralizing tendency. Knowing the difficulty of detecting an illegal pecuniary transaction between two persons, in which no third person is involved, so long as it is the interest of both to keep the secret, legislators have adopted the expedient of tempting the borrower to become the informer, by making the annulment of the debt a part of the penalty for the offence; thus rewarding men, for obtaining the property of others by false promises, and then not only refusing repayment, but invoking legal penalties on those who have helped them in their need. The moral sense of mankind very rightly infamizes those who resist an otherwise just claim on the ground of usury, and tolerates such a plea only when resorted to as the best legal defence available against an attempt really considered as partaking of fraud or extortion. But this very severity of public opinion renders the enforcement of the laws so difficult, and the infliction of the penalties so rare, that when it does occur it merely victimizes an individual, and has no effect on general practice.

In so far as the motive of the restriction may be supposed to be, not public policy, but regard for the interest of the borrower, it would be difficult to point out any case in which such tenderness on the legislator's part is more misplaced. A person of sane mind, and of the age at which persons are legally competent to conduct their own concerns, must be presumed to be a sufficient guardian of his pecuniary interests. If he may sell an estate, or grant a release, or assign away all his property, without control from the law, it seems very unnecessary that the only bargain which he cannot make without its intermeddling, should be a loan of money. The law seems to presume that the money-lender, dealing with necessitous persons, can take advantage of their necessities,

and exact conditions limited only by his own pleasure. It might be so if there were only one money-lender within reach. But when there is the whole monied capital of a wealthy community to resort to, no borrower is placed under any disadvantage in the market merely by the urgency of his need. If he cannot borrow at the interest paid by other people, it must be because he cannot give such good security; and competition will limit the extra demand to a fair equivalent for the risk of his proving insolvent. Though the law intends favour to the borrower, it is to him above all that injustice is, in this case, done by it. What can be more unjust than that a person who cannot give perfectly good security, should be prevented from borrowing of persons who are willing to lend money to him, by their not being permitted to receive the rate of interest which would be a just equivalent for their risk? Through the mistaken kindness of the law, he must either go without the money which is perhaps necessary to save him from much greater losses, or be driven to expedients of a far more ruinous description, which the law either has not found it possible, or has not happened, to interdict.

Adam Smith rather hastily expressed the opinion, that only two kinds of persons, "prodigals and projectors," could require to borrow money at more than the market rate of interest. He should have included all persons who are in any pecuniary difficulties, however temporary their necessities may be. It may happen to any person in business, to be disappointed of the resources on which he had calculated for meeting some engagement, the non-fulfilment of which on a fixed day would be bankruptcy. In periods of commercial difficulty, this is the condition of many prosperous mercantile firms, who become competitors for the small amount of disposable capital which, in a time of general distrust, the owners are willing to part with. Up to the relaxation of the usury laws a few years ago, the limitations imposed by those laws were felt as a most serious aggravation of every commercial crisis. Merchants who could have obtained the

aid they required at an interest of seven or eight per cent for short periods, were obliged to give 20 or 30, or to resort to forced sales of goods at a still greater loss. Experience having obtruded these evils on the notice of Parliament, the sort of compromise took place, of which English legislation affords so many instances, and which helps to make our laws and policy the mass of inconsistency that they are. We reformed the laws as a person reforms a tight shoe, who cuts a hole in it where it pinches hardest, and continues to wear it. Retaining the erroneous principle as a general rule, Parliament allowed an exception in the case in which the practical mischief was most flagrant. It left the usury laws unrepealed, but exempted bills of exchange, of not more than three months date, from their operation. Some years afterwards the laws were repealed in regard to all other contracts, but left in force as to all those which relate to land. Not a particle of reason could be given for making this extraordinary distinction; but the "agricultural mind" was of opinion that the interest on mortgages, though it hardly ever comes up to the permitted point, would come up to a still higher point; and the laws are maintained that the landlords may, as they think, be enabled to borrow below the market rate, as the corn-laws were so long kept up that the same class might be able to sell corn above the market rate. The modesty of the pretension is quite worthy of the intelligence which can think that the end aimed at is in any way forwarded by the means used.

With regard to the "prodigals and projectors" spoken of by Adam Smith; no law can prevent a prodigal from ruining himself, unless it lays him or his property under actual restraint, which, on the requisition of his relations, the Roman Law and some of the Continental systems founded on it give power in certain cases to do. The only effect of usury laws upon a prodigal, is to make his ruin rather more expeditious, by driving him to a disreputable class of money-dealers, and rendering the conditions more onerous by the extra risk

created by the law. As for projectors, a term, in its unfavourable sense, rather unfairly applied to every person who has a project; such laws may put a veto upon the prosecution of the most promising enterprize, when planned, as it generally is, by a person who does not possess capital adequate to its successful completion. Many of the greatest improvements were at first looked shily on by capitalists, and had to wait long before they found one sufficiently adventurous to be the first in a new path: many years elapsed before Stephenson could convince even the enterprizing mercantile public of Liverpool and Manchester, of the advantage of substituting railways for turnpike-roads; and plans on which great labour and large sums have been expended with little visible result, (the epoch in their progress when predictions of failure are sure to be the most rife), may be indefinitely suspended, or altogether dropped, and the outlay all lost, if, when the original funds are exhausted, the law will not allow more to be raised on the terms on which people are willing to expose it to the chances of an enterprize not yet secure of success.

§ 3. Loans are not the only kind of contract, of which government have thought themselves qualified to regulate the conditions better than the persons interested. There is scarcely any commodity which they have not, at some place or time, endeavoured to make either dearer or cheaper than it would be if left to itself. The most plausible case for artificially cheapening a commodity, is that of food. The desirableness of the object is in this case undeniable. But since the average price of food, like that of other things, conforms to the cost of production with the addition of the usual profit; if this price is not expected by the farmer, he will, unless compelled by law, produce no more than he requires for his own consumption: and the law therefore, if absolutely determined to have food cheaper, must substitute, for the ordinary motives to cultivation, a system of penalties. If it shrinks

from doing this, it has no resource but that of taxing the whole nation, to give a bounty or premium to the grower or importer of corn, thus giving everybody cheap bread at the expense of all: in reality a largess to those who do not pay taxes, at the expense of those who do; one of the worst forms of a practice essentially bad, that of converting the working classes into unworking classes by making them a present of subsistence.

It is not however so much the general or average price of food, as its occasional high price in times of emergency, which governments have studied to reduce. In some cases, as for example the famous "maximum" of the revolutionary government of 1793, the compulsory regulation was an attempt by the ruling powers to counteract the necessary consequences of their own acts; to scatter an indefinite abundance of the circulating medium with one hand, and keep down prices with the other; a thing manifestly impossible under any regime except one of unmitigated terror. In case of actual scarcity, governments are often urged, as they were in the Irish emergency of 1847, to take measures of some sort for moderating the price of food. But the price of a thing cannot be raised by deficiency of supply, beyond what is sufficient to make a corresponding reduction of the consumption; and if a government prevents this reduction from being brought about by a rise of price, there remains no mode of effecting it unless by taking possession of all the food, and serving it out in rations, as in a besieged town. In a real scarcity, nothing can afford general relief, except a determination by the richer classes to diminish their own consumption. If they buy and consume their usual quantity of food, and content themselves with giving money, they do no good. The price is forced up until the poorest competitors have no longer the means of competing, and the privation of food is thrown exclusively upon the indigent, the other classes being only affected pecuniarily. When the supply is insufficient, somebody must consume less, and if every rich person is

determined not to be that somebody, all they do by subsidizing their poorer competitors is to force up the price so much the higher, with no effect but to enrich the corn-dealers, the very reverse of what is desired by those who recommend such measures. All that governments can do in these emergencies, is to counsel a general moderation in consumption, and to interdict such kinds of it as are not of primary importance. Direct measures at the cost of the state, to procure food from a distance, are expedient when from peculiar reasons the thing is not likely to be done by private speculation. In any other case they are a great error. Private speculators will not, in such cases, venture to compete with the government; and though a government can do more than any one merchant, it cannot do nearly so much as all merchants.

§ 4. Governments, however, are oftener chargeable with having attempted, but too successfully, to make things dear, than with having aimed by wrong means at making them cheap. The usual instrument for producing artificial dearness is monopoly. To confer a monopoly upon a producer or dealer, or upon a set of producers or dealers sufficiently numerous to combine, is to give them the power of levying any amount of taxation on the public, for their individual benefit, which will not make the public forego the use of the commodity. When the sharers in the monopoly are so numerous and so widely scattered that they are prevented from combining, the evil is considerably less: but even then the competition is not so active among a limited, as among an unlimited number. Those who feel assured of a fair average proportion in the general business, are seldom eager to get a larger share by foregoing a portion of their profits. A limitation of competition, however partial, may have mischievous effects quite disproportioned to the apparent cause. The mere exclusion of foreigners, from a branch of industry open to the free competition of every native, has been known,

even in enterprising England, to render that branch a conspicuous exception to the general industrial energy of the country. The silk manufacture of England remained far behind that of other countries of Europe, so long as the foreign fabrics were prohibited. In addition to the tax levied for the profit, real or imaginary, of the monopolists, the consumer thus pays an additional tax for their laziness and incapacity. When relieved from the immediate stimulus of competition, producers and dealers grow indifferent to the dictates of their ultimate pecuniary interest; preferring to the most hopeful prospects, the present ease of adhering to routine. A person who is already thriving, seldom puts himself out of his way to commence even a lucrative improvement, unless urged by the additional motive of fear lest some rival should supplant him by getting possession of it before him.

The condemnation of monopolies ought not to extend to patents, by which the originator of an improved process is permitted to enjoy, for a limited period, the exclusive privilege of using his own improvement. This is not making the commodity dear for his benefit, but merely postponing a part of the increased cheapness which the public owe to the inventor, in order to compensate and reward him for the service. That he ought to be both compensated and rewarded for it, will not be denied, and also that if all were at once allowed to avail themselves of his ingenuity, without having shared the labours or the expenses which he had to incur in bringing his idea into a practical shape, either such expenses and labours would be undergone by nobody, except by very opulent and very public-spirited persons, or the state must put a value on the service rendered by an inventor, and make him a pecuniary grant. This has been done in some instances, and may be done without inconvenience in cases of very conspicuous public benefit; but in general an exclusive privilege, of temporary duration, is preferable; because it leaves nothing to any one's discretion; because the reward conferred by it depends upon the invention's being found

useful, and the greater the usefulness the greater the reward; and because it is paid by the very persons to whom the service is rendered, the consumers of the commodity. So decisive, indeed, are these considerations, that if the system of patents were abandoned for that of rewards by the state, the best shape which these could assume would be that of a small temporary tax, imposed for the inventor's benefit on all persons making use of the invention.

§ 5. I pass to another kind of government interference, in which the end and the means are alike odious, but which existed in England until not much more than twenty years ago, and is in full vigour at this day in some other countries. I mean the laws against combinations of workmen to raise wages; laws enacted and maintained for the declared purpose of keeping wages low, as the famous Statute of Labourers was passed by a legislature of employers, to prevent the labouring class, when its numbers had been thinned by a pestilence, from taking advantage of the diminished competition to obtain higher wages. Such laws exhibit the infernal spirit of the slave master, when to retain the working classes in avowed slavery has ceased to be practicable.

If it were possible for the working classes, by combining among themselves, to raise or keep up the general rate of wages, it needs hardly be said that this would be a thing not to be punished, but to be welcomed and rejoiced at. Unfortunately the effect is quite beyond attainment by such means. The multitudes who compose the working class are too numerous, and too widely scattered, to combine at all, much more to combine effectually. If they could do so, they might doubtless succeed in diminishing the hours of labour, and obtaining the same wages for less work. But if they aimed at obtaining actually higher wages than the rate fixed by demand and supply—the rate which distributes the whole circulating capital of the country among the entire working population—

this could only be accomplished by keeping a part of their number permanently out of employment. As support from public charity would of course be refused to those who could get work and would not accept it, they would be thrown for support upon the trades union of which they were members; and the workmen collectively would be no better off than before, having to support the same numbers out of the same aggregate wages. In this way, however, the class would have its attention forcibly drawn to the fact of a superfluity of numbers, and to the necessity, if they would have high wages, of proportioning the supply of labour to the demand.

Combinations to keep up wages are sometimes successful, in trades where the workpeople are few in number, and collected in a small number of local centres. It is questionable if combinations ever had the smallest effect on the permanent remuneration of spinners or weavers; but the journeymen type-founders, by a close combination, are able, it is said, to keep up a rate of wages much beyond that which is usual in employments of equal hardness and skill; and even the tailors, a much more numerous class, are understood to have had, to some extent, a similar success. A rise of wages, thus confined to particular employments, is not (like a rise of general wages) defrayed from profits, but raises the value and price of the particular article, and falls on the consumer; the capitalist who produces the commodity being only injured in so far as the high price tends to narrow the market; and not even then, unless it does so in a greater ratio than that of the rise of price: for though, at higher wages, he employs with a given capital fewer workmen, and obtains less of the commodity, yet if he can sell the whole of this diminished quantity at the higher price, his profits are as great as before.

This partial rise of wages, if not gained at the expense of the remainder of the working class, ought to be regarded as a benefit. The consumer indeed must pay for it; but cheapness of goods is desirable only when the cause of it is that their

production costs little labour, and not when occasioned by that labour's being ill remunerated. It may appear, however, at first sight, that the high wages of the type-founders (for example) are obtained at the general cost of the labouring class. This high remuneration either causes fewer persons to find employment in the trade, or if not, must lead to the investment of more capital in it, at the expense of other trades: in the first case it throws an additional number of labourers on the general market; in the second, it withdraws from that market a portion of the demand: effects, both of which are injurious to the working classes. Such indeed would really be the result of a successful combination in a particular trade or trades, for some time after its formation. But when it is a permanent thing, the principles so often insisted upon in this treatise, show that it can have no such effect. The habitual earnings of the working classes at large, can be affected by nothing but the habitual requirements of the labouring people: these indeed may be altered, but while they remain the same, wages never fall permanently below the standard of these requirements, and cannot long remain above that standard. If there had been no combinations in particular trades, and the wages of those trades had never been kept above the universal level, there is no reason whatever to suppose that the universal level would have been at all higher than it now is. There would merely have been a greater number of people altogether, and a smaller number of exceptions to the ordinary low rate of wages.

Combinations to keep up wages are therefore not only permissible, but useful, whenever really calculated to have that effect. It is, however, an indispensable condition that the combination should be voluntary. No severity, necessary to the purpose, is too great to be employed against attempts to compel workmen to join a union, or take part in a strike, by threats or violence. Mere moral compulsion, by the expression of opinion, the law ought not to interfere with; it belongs to more enlightened opinion to restrain it, by

rectifying the moral sentiments of the people. Other questions arise when the combination, being voluntary, proposes to itself objects really contrary to the public good. High wages and short hours are generally good objects, or, at all events, may be so, and a limitation of the number of persons in employment may be a necessary condition of these. Combinations, therefore, not to work for less than certain wages, or for more than a certain number of hours, or even not to work for a master who employs more than a certain number of apprentices, are, when voluntary on the part of all who engage in them, not only unexceptionable, but would be desirable, were it not that they almost always fail of their effect. But in many trades unions, it is among the rules that there shall be no task work, or no difference of pay between the most expert workmen and the most unskilful, or that no member of the union shall earn more than a certain sum per week, in order that there may be more employment for the rest. These are combinations to effect objects which are pernicious. Their success, even when only partial, is a public mischief, and were it complete, would be equal in magnitude to almost any of the evils arising from bad legislation. Hardly anything worse can be said of the worst laws on the subject of property and industry, than that they place the energetic and the idle, the skilful and the incompetent, on a level: and this it is the avowed object of the regulations of these unions to do. Every society which exacts from its members obedience to rules of this description, and endeavours to enforce compliance with them on the part of employers by refusal to work, is a public nuisance. Whether the law would be warranted in making the formation of such associations illegal and punishable, depends upon the difficult question of the legitimate bounds of constitutional liberty. What are the proper limits to the right of association? To associate for the purpose of violating the law, could not of course be tolerated under any government. But among the numerous acts which, although mischievous in themselves, the law ought

not to prohibit from being done by individuals, are there not some which are rendered so much more mischievous when people combine to do them, that the legislature ought to prohibit the combination, though not the act itself? When these questions have been philosophically answered, which belongs to a different branch of social philosophy from the present, it may be determined whether the kind of associations here treated of can be a proper subject of any other than merely moral repression.

§ 6. Among the modes of undue exercise of the power of government, on which I have commented in this chapter, I have included only such as rest on theories which have still more or less of footing in the most enlightened countries. I have not spoken of some which have done still greater mischief in times not long past, but which are now generally given up, at least in theory, though enough of them still remains in practice to make it impossible as yet to class them among exploded errors.

The notion, for example, that a government should choose opinions for the people, and should not suffer any doctrines in politics, morals, law, or religion, but such as it approves, to be printed or publicly professed, may be said to be altogether abandoned as a general thesis. It is now well understood that a régime of this sort is fatal to all prosperity, even of an economical kind: that the human mind, when prevented either by fear of the law or by fear of opinion from exercising its faculties freely on the most important subjects, acquires a general torpidity and imbecility, by which, when they reach a certain point, it is disqualified from making any considerable advances even in the common affairs of life, and which, when greater still, make it gradually lose even its previous attainments. There cannot be a more decisive example than Spain and Portugal, from the Reformation to the present time. The decline of those countries in national greatness and even in material civilization, while

almost all the other nations of Europe were uninterruptedly advancing, has been ascribed to various causes, but there is one which lies at the foundation of them all: the Holy Inquisition, and the system of mental slavery of which it is the symbol.

Yet although these truths are very widely recognized, and freedom both of opinion and of discussion is admitted as an axiom in all free countries, this apparent liberality and tolerance has acquired so little of the authority of a principle, that it is always ready to give way to the dread or horror inspired by some particular sort of opinions. Within the last two or three years several individuals have suffered imprisonment, for the public profession, sometimes in a very temperate manner, of infidel opinions; and it is probable that both the public and the government, at the first panic which arises on the subject of Chartism or Communism, will fly to similar means for checking the propagation of democratic or anti-property doctrines. In this country, however, the effective restraints on mental freedom proceed much less from the law or the government, than from the intolerant temper of the national mind; arising no longer from even so respectable a source as bigotry or fanaticism, but rather from the general habit, both in opinion and conduct, of making adherence to custom the rule of life, and enforcing it, by social penalties, against all persons who, without a party to back them, assert their individual independence.

CHAPTER XI.

OF THE GROUNDS AND LIMITS OF THE LAISSER-FAIRE OR NON-INTERFERENCE PRINCIPLE.

§ 1. We have now reached the last part of our undertaking; the discussion, so far as suited to this treatise (that is, so far as it is a question of principle, not detail) of the limits of the province of government; the question, to what objects governmental intervention in the affairs of society may or should extend, over and above those which necessarily appertain to it. No subject has been more keenly contested in the present age: the contest, however, has chiefly been carried on around certain select points, with only flying excursions into the rest of the field. Those indeed who have discussed any particular question of government interference, such as state education (spiritual or secular), regulation of hours of labour, a public provision for the poor, &c., have often dealt largely in general arguments, far outstretching the special application made of them, and have shewn a sufficiently strong bias either in favour of letting things alone, or in favour of meddling; but have seldom declared, or apparently decided in their own minds, how far they would carry either principle. The supporters of interference have been content with asserting a general right and duty on the part of government to intervene, wherever its intervention would be useful: and when those who have been called the *laisser-faire* school have attempted any definite limitation of the province of government, they have usually restricted it to the protection of person and property against force and fraud; a definition to which neither they nor any one else can deliberately adhere, since it excludes, as has been shewn in a

preceding chapter*, some of the most indispensable and unanimously recognized of the duties of government.

Without professing entirely to supply this deficiency of a general theory, on a question which does not, as I conceive, admit of any universal solution, I shall attempt to afford some little aid towards the resolution of this class of questions as they arise, by examining, in the most general point of view in which the subject can be considered, what are the advantages, and what the evils or inconveniences, of government interference.

We must set out by distinguishing between two kinds of intervention by the government, which, though they may relate to the same subject, differ widely in their nature and effects, and require, for their justification, motives of a very different degree of urgency. The intervention may extend to controlling the free agency of individuals. Government may interdict all persons from doing certain things; or from doing them without its authorization; or may prescribe to them certain things to be done, or a certain manner of doing things which it is left optional with them to do or to abstain from. This is the *authoritative* interference of government. There is another kind of intervention which is not authoritative: when a government, instead of issuing a command and enforcing it by penalties, adopts the course so seldom resorted to by governments, and of which such important use might be made, that of giving advice, and promulgating information; or when, leaving individuals free to use their own means of pursuing any object of general interest, the government, not meddling with them, but not trusting the object solely to their care, establishes, side by side with their arrangements, an agency of its own for a like purpose. Thus, it is one thing to maintain a Church Establishment, and another to refuse toleration to other religions, or to persons professing no religion. It is one thing to provide schools or

* Supra, book v. ch. 1.

colleges, and another to require that no person shall act as an instructor of youth without a government license. There might be a national bank, or a government manufactory, without any monopoly against private banks and manufactories. There might be a post-office, without penalties against the conveyance of letters by other means. There may be a corps of government engineers for civil purposes, while the profession of a civil engineer is free to be adopted by every one. There may be public hospitals, without any restriction upon private medical or surgical practice.

§ 2. It is evident, even at first sight, that the authoritative form of government intervention has a much more limited sphere of legitimate action than the other. It requires a much stronger necessity to justify it in any case, while there are large departments of human life from which it must be unreservedly and imperiously excluded. Whatever theory we adopt respecting the foundation of the social union, and under whatever political institutions we live, there is a circle around every individual human being, which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep; there is a part of the life of every person, who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively. That there is, or ought to be, some space in human existence thus entrenched round, and sacred from authoritative intrusion, no one who professes the smallest regard to human freedom or dignity will call in question: the point to be determined is, where the limit should be placed; how large a province of human life this reserved territory should include. I apprehend that it ought to include all that part which concerns only the life, whether inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example.

With respect to the domain of the inward consciousness, the thoughts and feelings, and as much of external conduct as is personal only, involving no consequences, none at least of a painful or injurious kind, to other people; I hold that it is allowable in all, and in the more thoughtful and cultivated often a duty, to assert and promulgate, with all the force they are capable of, their opinion of what is good or bad, admirable or contemptible, but not to compel others to conform to that opinion; whether the force used is that of extra-legal coercion, or exerts itself by means of the law.

Even in those portions of conduct which do affect the interests of others, the onus of making out a case always lies upon the defenders of legal prohibitions. It is not a merely constructive or presumptive injury to others, which will justify the interference of law with individual freedom. To be prevented from doing what one is inclined to, or from acting according to one's own judgment of what is desirable, is not only always irksome, but always tends, *pro tanto*, to starve the developement of some portion of the bodily or mental faculties, either sensitive or active; and unless the conscience of the individual goes freely with the legal restraint, it partakes, either in a great or in a small degree, of the degradation of slavery. Scarcely any degree of utility, short of absolute necessity, will justify a prohibitory regulation, unless it can be made to recommend itself to the general conscience; unless persons of ordinary good intentions either believe already, or can be induced to believe, that the thing prohibited is a thing which they ought not to wish to do.

It is otherwise with governmental interferences which do not restrain individual free agency. When a government provides means for fulfilling a certain end, leaving individuals free to avail themselves of different means if in their opinion preferable, there is no infringement of liberty, no irksome or degrading restraint. One of the principal objections to government interference is then absent. There is, however, in almost all forms of government agency, one thing which

is compulsory; the provision of the pecuniary means. These are derived from taxation; or, if existing in the form of an endowment derived from public property, they are still the cause of as much compulsory taxation as the sale or the annual proceeds of the property would enable to be dispensed with*. And the objection necessarily attaching to compulsory contributions, is almost always greatly aggravated by the expensive precautions and onerous restrictions, which are indispensable to prevent evasion of a compulsory tax.

§ 3. A second general objection to government agency, is that every increase of the functions devolving on the government is an increase of its power, both in the form of authority, and still more, in the indirect form of influence. The importance of this consideration, in respect to political freedom, has in general been quite sufficiently recognized, at least in England; but many, in latter times, have been prone to think that limitation of the powers of the government is only essential when the government itself is badly constituted; when it does not represent the people, but is the organ of a class, or coalition of classes; and that a government of sufficiently popular constitution might be trusted with any amount of power over the nation, since its power would be only that of the nation over itself. This might be true, if the nation, in such cases, did not practically mean a mere majority of the nation, and if minorities were only capable of oppressing, but not of being oppressed. Experience, however, proves that the depositaries of power who

* The only cases in which government agency involves nothing of a compulsory nature, are the rare cases in which, without any artificial monopoly, it pays its own expenses. A bridge built with public money, on which tolls are collected, sufficient to pay not only all current expenses, but the interest of the original outlay, is one case in point. The government railways in Belgium and Germany are another example. The Post Office, if its monopoly were abolished, and it still paid its own expenses, would be another.

are mere delegates of the people, that is, of a majority, are quite as ready (when they think they can count on popular support) as any organs of oligarchy, to assume arbitrary power, and encroach unduly on the liberty of private life. The public collectively is abundantly ready to impose, not only its generally narrow views of its interests, but its abstract opinions, and even its tastes, as laws binding upon individuals. And our present civilization tends so strongly to make the power of persons acting in masses the only substantial power in society, that there never was more necessity for surrounding individual independence of thought, speech, and conduct, with the most powerful defences, in order to maintain that originality of mind and individuality of character, which are the only source of any real progress, and of most of the qualities which make the human race much superior to any herd of animals. Hence it is no less important in a democratic than in any other government, that all tendency on the part of public authorities to stretch their interference, and assume a power of any sort which can easily be dispensed with, should be regarded with unremitting jealousy. Perhaps this is even more important in a democracy than in any other form of political society; because, where public opinion is sovereign, an individual who is oppressed by the sovereign does not, as in most other states of things, find some other and rival power to which he can appeal for relief.

§ 4. A third general objection to government agency, rests on the principle of the division of labour. Every additional function undertaken by the government, is a fresh occupation imposed upon a body already overcharged with duties. A natural consequence is that most things are ill done; much not done at all, because the government is not able to do it without delays which are fatal to its purpose; that the more troublesome, and less showy, of the functions undertaken, are postponed or neglected, and an excuse is

always ready for the neglect; while the heads of the administration have their minds so fully taken up with official details, in however perfunctory a manner superintended, that they have no time or thought to spare for the great interests of the state, and the preparation of enlarged measures of social improvement.

But these inconveniences, though real and serious, result much more from the bad organization of governments, than from the extent or variety of the duties undertaken by them. Government is not a name for some one functionary, or definite number of functionaries: there may be almost any amount of division of labour within the administrative body itself. The evil in question is felt in great magnitude under some of the governments on the Continent, where six or eight men, living at the capital and known by the name of ministers, demand that the whole public business of the country shall pass, or be supposed to pass, under their individual eye. But the inconvenience would be reduced to a very manageable compass, in a country in which there was a proper distribution of functions between the central and local officers of government, and in which the central body was divided into a sufficient number of departments. When Parliament thought it expedient to confer on the government an inspecting and partially controlling authority over railways, it did not add railways to the department of the Home Minister, but created a Railway Board. When it determined to have a central superintending authority for pauper administration, it established the Poor Law Commission. There are few countries in which a greater number of functions are discharged by public officers, than in some states of the American Union, particularly the New England States: but the division of labour in public business is extreme; most of these officers being not even amenable to any common superior, but performing their duties freely, under the double check of election by their townsmen, and civil as well as criminal responsibility to the tribunals.

It is, no doubt, indispensable to good government that the chiefs of the administration, whether permanent or temporary, should extend a commanding, though general, view over the *ensemble* of all the interests confided, in any degree, to the responsibility of the central power. But with a skilful internal organization of the administrative machine, leaving to subordinates, and as far as possible to local subordinates, not only the execution, but to a great degree the control, of details; holding them accountable for the results of their acts rather than for the acts themselves, except where these come within the cognizance of the tribunals; taking the most effectual securities for honest and capable appointments; opening a broad path to promotion from the inferior degrees of the administrative scale to the superior; leaving, at each step, to the functionary, a wider range in the origination of measures, so that, in the highest grade of all, deliberation may be concentrated on the great collective interests of the country in each department; if all this were done, the government would not probably be overburthened by any business, in other respects fit to be undertaken by it; though the overburthening would remain as a serious addition to the inconveniences incurred by its undertaking any which was unfit.

§ 5. But although a better organization of governments would greatly diminish the force of the objection to the mere multiplication of their duties, it would still remain true that in all the more advanced communities, the great majority of things are worse done by the intervention of government, than the individuals most interested in the matter would do them, or cause them to be done, if left to themselves. The grounds of this truth are expressed with tolerable exactness in the popular dictum, that people understand their own business and their own interests better, and care for them more, than the government does, or can be expected to do. This maxim holds true throughout the greatest part of the

business of life, and wherever it is true we ought to condemn every kind of government intervention that conflicts with it. The inferiority of government agency, for example, in any of the common operations of industry or commerce, is proved by the fact, that it is hardly ever able to maintain itself in equal competition with individual agency, where the individuals possess the requisite degree of industrial enterprise, and can command the necessary assemblage of means. All the facilities which a government enjoys of access to information; all the means which it possesses of remunerating, and therefore of commanding, the best available talent in the market—are not an equivalent for the one great disadvantage of an inferior interest in the result.

It must be remembered, besides, that even if a government were superior in intelligence and knowledge to any single individual in the nation, it must be inferior to all the individuals of the nation taken together. It can neither possess in itself, nor enlist in its service, more than a portion of the acquirements and capacities which the country contains, applicable to any given purpose. There must be many persons equally qualified for the work with those whom the government employs, even if it selects its instruments with no reference to any consideration but their fitness. Now these are the very persons into whose hands, in the cases of most common occurrence, a system of individual agency naturally tends to throw the work, because they are capable of doing it better and on cheaper terms than any other persons. So far as this is the case, it is evident that government, by excluding or even by superseding individual agency, either substitutes a less qualified instrumentality for one better qualified, or at any rate substitutes its own mode of accomplishing the work, for all the variety of modes which would be tried by a number of equally qualified persons aiming at the same end; a competition by many degrees more propitious to the progress of improvement, than any uniformity of system.

§ 6. I have reserved for the last place one of the strongest of the reasons against the extension of government agency. Even if the government could comprehend within itself, in each department, all the most eminent intellectual capacity and active talent of the nation, it would not be the less desirable that the conduct of a large portion of the affairs of society should be left in the hands of the persons immediately interested in them. The business of life, is an essential part of the practical education of a people; without which, book and school instruction, though most necessary and salutary, does not suffice to qualify them for conduct, and for the adaptation of means to ends. Instruction is only one of the desiderata of mental improvement; another, almost as indispensable, is a vigorous exercise of the active energies; labour, contrivance, judgment, self-control: and the natural stimulus to these is the difficulties of life. This doctrine is not to be confounded with the complacent optimism, which represents the difficulties of life as desirable things, because they call forth qualities adapted to combat with difficulties. It is only because the difficulties exist, that the qualities which combat with them are of any value. As practical beings it is our business to free human life from as many as possible of its difficulties, and not to keep up a stock of them as hunters preserve game, for the exercise of pursuing it. But since the need of active talent and practical judgment in the affairs of life can only be diminished, and not, even on the most favourable supposition, done away with, it is important that those endowments should be cultivated not merely in a select few, but in all, and that the cultivation should be more varied and complete than most persons are able to find in the narrow sphere of their merely individual interests. A people among whom there is no habit of spontaneous action for a collective interest—who look habitually to their government to command or prompt them in all matters of joint concern—who expect to have everything done for them, except what can be made an affair of mere habit and routine—have their faculties

only half developed; their education is defective in one of its most important branches.

Not only is the cultivation of the active faculties by exercise, diffused through the whole community, in itself one of the most valuable of national possessions: it is rendered, not less, but more, necessary, by the fact, that a high degree of that indispensable culture is systematically kept up in the chiefs and functionaries of the state. There cannot be a combination of circumstances more dangerous to human welfare, than that in which intelligence and talent are maintained at a high standard within a governing corporation, but starved and discouraged outside the pale. Such a system, more completely than any other, embodies the idea of despotism, by arming with intellectual superiority as an additional weapon, those who have already the legal power. It approaches as nearly as the organic difference between human beings and other animals admits, to the government of sheep by their shepherd, without anything like so strong an interest as the shepherd has in the thriving condition of the flock. The only security against political slavery, is the check maintained over governors, by the diffusion of intelligence, activity, and public spirit among the governed. Experience proves the extreme difficulty of permanently keeping up a sufficiently high standard of those qualities; a difficulty which increases, as the advance of civilization and security removes one after another of the hardships, embarrassments, and dangers against which individuals had formerly no resource but in their own strength, skill, and courage. It is therefore of supreme importance that all classes of the community, down to the lowest, should have much to do for themselves; that as great a demand should be made upon their intelligence and virtue as it is in any respect equal to; that the government should not only leave as much as possible to their own faculties the conduct of whatever concerns themselves alone, but should suffer them, or rather encourage them, to manage as many as possible of their joint concerns by voluntary co-

operation: since the discussion and management of collective interests is the great school of that public spirit, and the great source of that intelligence of public affairs, which are always regarded as the distinctive character of the public of free countries.

A democratic constitution, not supported by democratic institutions in detail, but confined to the central government, not only is not political freedom, but often creates a spirit precisely the reverse, carrying down to the lowest grade in society the desire and ambition of political domination. In some countries the desire of the people is for not being tyrannized over, but in others it is merely for an equal chance to everybody of tyrannizing. Unhappily this last state of the desires is fully as natural to mankind as the former, and in many of the conditions even of civilized humanity, is far more largely exemplified. In proportion as the people are accustomed to manage their affairs by their own active intervention, instead of leaving them to the government, their desires will turn to repelling tyranny, rather than to tyrannizing: while in proportion as all real initiative and direction resides in the government, and individuals habitually feel and act as under its perpetual tutelage, popular institutions develope in them not the desire of freedom, but an unmeasured appetite for place and power; diverting the intelligence and activity of the country from its principal business, to a wretched competition for the selfish prizes and the petty vanities of office.

§ 7. The preceding are the principal reasons, of a general character, in favour of restricting to the narrowest compass the intervention of a public authority in the business of the community: and few will dispute the more than sufficiency of these reasons, to throw, in every instance, the burthen of making out a strong case, not on those who resist, but on those who recommend, government interference. *Laisser-faire*, in short, should be the general practice: every

departure from it, unless required by some great good, is a certain evil.

The degree in which the maxim, even in the cases to which it is most manifestly applicable, has heretofore been infringed by governments, future ages will probably have difficulty in crediting. Some idea may be formed of it from the description by M. Dunoyer* of the restraints imposed on the operations of manufacture under the old government of France, by the meddling and regulating spirit of legislation.

"La société exerçait sur la fabrication la juridiction la plus illimitée et la plus arbitraire: elle disposait sans scrupule des facultés des fabricants; elle décidait qui pourrait travailler, quelle chose on pourrait faire, quels matériaux on devrait employer, quels procédés il faudrait suivre, quelles formes on donnerait aux produits, etc. Il ne suffisait pas de faire bien, de faire mieux, il fallait faire suivant les règles. Qui ne connaît ce règlement de 1670, qui prescrivait de saisir et de clouer au poteau, avec le nom des auteurs, les marchandises non conformes aux règles tracées, et qui, à la seconde récidive, voulait que les fabricants y fussent attachés eux-mêmes? Il ne s'agissait pas de consulter le goût des consommateurs, mais de se conformer aux volontés de la loi. Des légions d'inspecteurs, de commissaires, de contrôleurs, de jurés, de gardes, étaient chargés de les faire exécuter; on brisait les métiers, on brûlait les produits qui n'y étaient pas conformes: les améliorations étaient punies; on mettait les inventeurs à l'amende. On soumettait à des règles différentes la fabrication des objets destinés à la consommation intérieure et celle des produits destinés au commerce étranger. Un artisan n'était pas le maître de choisir le lieu de son établissement, ni de travailler en toute saison, ni de travailler pour tout le monde. Il existe un décret du 30 Mars 1700, qui borne à dix-huit villes le nombre des lieux où l'on pourra faire des

* *De la Liberté du Travail*, vol. ii. pp. 353—4.

bas au métier; un arrêt du 18 Juin 1723 enjoint aux fabricants de Rouen de suspendre leurs travaux du 1er Juillet au 15 Septembre, afin de faciliter ceux de la récolte; Louis XIV., quand il voulut entreprendre la colonnade du Louvre, défendit aux particuliers d'employer des ouvriers sans sa permission, sous peine de 10,000 livres d'amende, et aux ouvriers de travailler pour les particuliers, sous peine, pour la première fois, de la prison, et pour la seconde, des galères."

That these and similar regulations were not a dead letter, and that the officious and vexatious meddling was prolonged down to the French Revolution, we have the testimony of Roland, the Girondist minister*. "I have seen," says he, "eighty, ninety, a hundred pieces of cotton or woollen stuff cut up and completely destroyed. I have witnessed similar scenes every week for a number of years. I have seen manufactured goods confiscated; heavy fines laid on the manufacturers; some pieces of fabric were burnt in public places, and at the hours of market: others were fixed to the pillory, with the name of the manufacturer inscribed upon them, and he himself was threatened with the pillory, in case of a second offence. All this was done under my eyes, at Rouen, in conformity with existing regulations, or ministerial orders. What crime deserved so cruel a punishment? Some defects in the materials employed, or in the texture of the fabric, or even in some of the threads of the warp.

"I have frequently seen manufacturers visited by a band of satellites who put all in confusion in their establishments, spread terror in their families, cut the stuffs from the frames, tore off the warp from the looms, and carried them away as proofs of infringement; the manufacturers were summoned, tried, and condemned; their goods confiscated; copies of their judgment of confiscation posted up in every public place; fortune, reputation, credit, all was lost and destroyed.

* I quote at second hand, from Mr. Carey's *Essay on the Rate of Wages*, pp. 195—6.

And for what offence? Because they had made of worsted, a kind of cloth called shag, such as the English used to manufacture, and even sell in France, while the French regulations stated that that kind of cloth should be made with mohair. I have seen other manufacturers treated in the same way, because they had made camlets of a particular width, used in England and Germany, for which there was a great demand from Spain, Portugal, and other countries, and from several parts of France, while the French regulations prescribed other widths for camlets."

The time is gone by, when such applications as these of the principle of "paternal government" would be attempted, in even the least enlightened country of the European commonwealth of nations. In such cases as those cited, all the general objections to government interference are valid, and several of them in nearly their highest degree. But we must now turn to the second part of our task, and direct our attention to cases, in which some of those general objections are altogether absent, while those which can never be got rid of entirely, are overruled by counter-considerations of still greater importance.

We have observed that, as a general rule, the business of life is better performed when those who have an immediate interest in it are left to take their own course, uncontrolled either by the mandate of the law or by the meddling of any public functionary. The persons, or some of the persons, who do the work, are likely to be better judges than the government, of the means of attaining the particular end at which they aim. Were we to suppose, what is not very probable, that the government has possessed itself of the best knowledge which had been acquired up to a given time by the persons most skilled in the occupation; even then, the individual agent has so much stronger and more direct an interest in the result, that the means are far more likely to be improved and perfected if left to his uncontrolled choice. But if the workman is generally the best selector of means, can it be affirmed with

the same universality, that the consumer, or person served, is the most competent judge of the end? Is the buyer always qualified to judge of the commodity? If not, the presumption in favour of the competition of the market does not apply to the case; and if the commodity be one, in the quality of which society has much at stake, the balance of advantages may be in favour of some mode or degree of intervention, by the authorized representatives of the collective interest of the state.

§ 8. Now, the proposition that the consumer is a competent judge of the commodity, can be admitted only with numerous abatements and exceptions. He is generally the best judge (though even this is not true universally,) of the material objects produced for his use. These are destined to supply some physical want, or gratify some taste or inclination, respecting which wants or inclinations there is no appeal from the person who feels them; or they are the means and appliances of some occupation, for the use of the persons engaged in it, who may be presumed to be judges of the things required in their own habitual employment. But there are other things, of the worth of which the demand of the market is by no means a test; things of which the utility does not consist in ministering to inclinations, nor in serving the daily uses of life, and the want of which is least felt where the need is greatest. This is peculiarly true of those things which are chiefly useful as tending to raise the character of human beings. The uncultivated cannot be competent judges of cultivation. Those who most need to be made wiser and better, usually desire it least, and if they desired it, would be incapable of finding the way to it by their own lights. It will continually happen, on the voluntary system, that, the end not being desired, the means will not be provided at all, or that, the persons requiring improvement having an imperfect or altogether erroneous conception of what they want, the supply called forth by the demand of the

market will be anything but what is really required. Now any well-intentioned and tolerably civilized government may think without presumption that it does or ought to possess a degree of cultivation above the average of the community which it rules, and that it should therefore be capable of offering better education and better instruction to the people, than the greater number of them would spontaneously select. Education, therefore, is one of those things which it is admissible in principle that a government should provide for the people. The case is one to which the reasons of the non-interference principle do not necessarily or universally extend*.

* In opposition to these opinions, a writer, with whom on many points I agree, but whose hostility to government intervention seems to me too indiscriminate and unqualified, M. Dunoyer, observes, that instruction, however good in itself, can only be useful to the public, in so far as they are willing to receive it, and that the best proof that the instruction is suitable to their wants, is its success as a pecuniary enterprise. This argument seems no more conclusive respecting instruction for the mind, than it would be respecting medicine for the body. No medicine will do the patient any good if he cannot be induced to take it; but we are not bound to admit as a corollary from this, that the patient will select the right medicine without assistance. Is it not possible that a recommendation, from any quarter which he respects, may induce him to accept a better medicine than he would spontaneously have chosen? This is, in respect to education, the very point in debate. Without doubt, instruction which is so far in advance of the people that they cannot be induced to avail themselves of it, is to them of no more worth than if it did not exist. But between what they spontaneously choose, and what they will refuse to accept when offered, there is a breadth of interval proportioned to their deference for the recommender. Besides, a thing of which the public are bad judges, may require to be shown to them and pressed on their attention for a long time, and to prove its advantages by long experience, before they learn to appreciate it, yet they may learn at last; which they might never have done, if the thing had not been thus obtruded upon them in act, but only recommended in theory. Now, a pecuniary speculation cannot wait years, or perhaps generations, for success; it must succeed rapidly, or not at all. Another consideration which M. Dunoyer seems to have overlooked, is, that institutions and modes of tuition which never could be made sufficiently popular to repay, with a profit, the expenses incurred on them, may be invaluable to the many by giving the highest quality of education to the few, and keeping up the perpetual succession of superior minds by whom knowledge is advanced, and the community urged forward in civilization.

With regard to elementary education, the exception to ordinary rules may, I conceive, justifiably be carried still further. There are certain primary elements and means of knowledge, which it is in the highest degree desirable that all human beings born into the community should acquire during childhood. If their parents, or those on whom they depend, have the power of obtaining for them this instruction, and fail to do it, they commit a double breach of duty: towards the children themselves, and towards the members of the community generally, who are all liable to suffer seriously from the consequences of ignorance and want of education in their fellow citizens. It is therefore an allowable exercise of the powers of government, to impose on parents the legal obligation of giving elementary instruction to children. This however cannot fairly be done, without taking measures to ensure that such instruction shall be always accessible to them, either gratuitously or at a trifling expense.

It may indeed be objected that the education of children is one of those expenses which parents, even of the labouring class, ought to defray; that it is desirable that they should feel it incumbent on them to provide by their own means for the fulfilment of their duties, and that by giving education at the cost of others, just as much as by giving subsistence, the standard of necessary wages is proportionally lowered, and the springs of exertion and self-restraint in so much relaxed. To this argument there could be no reply, if the question were that of substituting a public provision for what individuals would otherwise do for themselves. If all parents in the labouring class recognized and practised the duty of giving instruction to their children at their own expense, no one would seek to undermine so virtuous a habit by volunteering a needless assistance. It is because parents do not practise this duty, and do not include education among those necessary expenses which their wages must provide for, that the general rate of wages is not high enough to bear those expenses, and that they must be borne from some other source.

And this is not one of the cases in which the tender of help perpetuates the state of things which renders help necessary. Instruction, when it is really such, does not enervate, but strengthens as well as enlarges the active faculties: in whatever manner acquired, its effect on the mind is favourable to the spirit of independence: and when, unless had gratuitously, it would not be had at all, help in this form has the opposite tendency to that which in so many other cases makes it objectionable; it is help towards doing without help.

In England, and most European countries, elementary instruction cannot be paid for, at its full cost, from the common wages of unskilled labour, and would not if it could. The alternative therefore is not between government, and private speculation, but between a government provision and voluntary charity: between interference by government, and interference by associations of individuals, subscribing their own money for the purpose, like the two great School Societies. It is, of course, not desirable that anything should be done by funds derived from compulsory taxation, which is already sufficiently well done by individual liberality. How far this is the case with school instruction, is, in each particular instance, a question of fact. The education provided in this country on the voluntary principle has of late been so much discussed, that it is needless in this place to criticize it minutely, and I shall merely express my conviction, that even in quantity it is, and is likely to remain, altogether insufficient, while in quality, though with some slight tendency to improvement, it is never good except by some rare accident, and generally so bad as to be little more than nominal. I hold it therefore the duty of the government to supply the defect, by providing elementary schools, accessible to all the children of the poor, either freely, or for a payment too inconsiderable to be sensibly felt, but which it might be proper to demand, merely in recognition of a principle: the remainder of the cost to be defrayed, as in Scotland, by a local rate, that the inhabitants of the locality might have a stronger interest in

watching over the management, and checking negligence and abuse.

One thing must be strenuously insisted on; that the government must claim no monopoly for its education, either in the lower or in the higher branches; must exert neither authority nor influence to induce the people to resort to its teachers in preference to others, and must confer no peculiar advantages on those who have been instructed by them. Though the government teachers will probably be superior to the average of private instructors, they will not embody all the knowledge and sagacity to be found in all instructors taken together, and it is desirable to leave open as many roads as possible to the desired end. Nor is it to be endured that a government should, either *de jure* or *de facto*, have a complete control over the education of the whole people. To possess such a control, and actually exert it, is to be a despot. A government which can mould the opinions and sentiments of the people from their youth upwards, can do with them whatever it pleases. Though a government, therefore, may, and in many cases ought to, establish schools and colleges, it must neither compel nor bribe any person to come to them; nor ought the power of individuals to set up rival establishments, to depend in any degree upon its authorization. It may be justified in requiring from all the people that they shall possess instruction in certain things, but not in prescribing to them how or from whom they shall obtain it.

§ 9. In the matter of education, the intervention of government is justifiable because the case is not one in which the interest and judgment of the consumer are a sufficient security for the goodness of the commodity. Let us now consider another class of cases, where there is no person in the situation of a consumer, and where the interest and judgment to be relied on are those of the agent himself; as in the conduct of any business in which he is exclusively

interested, or in entering into any contract or engagement by which he himself is to be bound.

The ground of the practical principle of non-interference must here be, that most persons take a juster and more intelligent view of their own interest, and of the means of promoting it, than can either be prescribed to them by a general enactment of the legislature, or pointed out in the particular case by a public functionary. The maxim is unquestionably sound as a general rule; but there is no difficulty in perceiving some very large and conspicuous exceptions to it. These may be classed under several heads.

First:—The individual who is presumed to be the best judge of his own interests may be incapable of judging or acting for himself; may be a lunatic, an idiot, an infant: or though not wholly incapable, may be of immature years and judgment. In this case the foundation of the *laisser-faire* principle breaks down entirely. The person most interested is not the best judge of the matter, nor a competent judge at all. Insane persons are everywhere regarded as proper objects of the care of the state. In the case of children and young persons, it is common to say, that though they cannot judge for themselves, they have their parents or other relatives to judge for them. But this removes the question into a different category; making it no longer a question whether the government should interfere with individuals in the direction of their own conduct and interests, but whether it should leave absolutely in their power the conduct and interests of somebody else. Parental power is as susceptible of abuse as any other power, and is, as a matter of fact, constantly abused. If laws do not succeed in preventing parents from brutally ill-treating, and even from murdering their children, far less ought it to be presumed that the interests of children will never be sacrificed, in more commonplace and less revolting ways, to the selfishness or the mistakes of their parents. Whatever it can be clearly seen that parents ought to do or forbear for the interest of children, the law is warranted, if it is able, in compelling to be done or forborne, and is generally bound to do so. To take an example from the peculiar province of political economy; it is right that children, and young persons not yet arrived at maturity, should be protected, so far as the eye and hand of the state can reach, from being over-worked. Labouring for too many hours in the day, or on work beyond their strength, should not be permitted to them, for if permitted it may always be compelled. Freedom of contract, in the case of children, is but another word for freedom of coercion. Education also, the best which circumstances admit of their receiving, is not a thing which parents or relatives, from indifference, jealousy, or avarice, should have it in their power to withhold.

The reasons for legal intervention in favour of children, apply not less strongly to the case of those unfortunate slaves and victims of the most brutal part of mankind, the lower animals. It is by the grossest misunderstanding of the principles of liberty, that the infliction of exemplary punishment on ruffianism practised towards these defenceless creatures, has been treated as a meddling by government with things beyond its province; an interference with domestic life. The domestic life of domestic tyrants is one of the things which it is the most imperative on the law to interfere with; and it is to be regretted that metaphysical scruples respecting the nature and source of the authority of government, should induce many warm supporters of laws against cruelty to animals, to seek for a justification of such laws in the incidental consequences of the indulgence of ferocious habits, to the interests of human beings, rather than in the intrinsic merits of the case itself. What it would be the duty of a human being, possessed of the requisite physical strength, to prevent by force if attempted in his presence, it cannot be less incumbent on society generally to repress. The existing laws of England on the subject are chiefly defective in the trifling, often almost nominal, maximum, to which the penalty even in the worst cases is limited; a fortnight's imprisonment, or a fine of forty shillings.

Among those members of the community whose freedom of contract ought to be controlled by the legislature for their own protection, on account (it is said) of their dependent position, it is frequently proposed to include women: and in the recent Factory Act, their labour, in common with that of young persons, has been placed under peculiar restrictions. But the classing together, for this and other purposes, of women and children, appears to me both indefensible in principle and mischievous in practice. Children below a certain age *cannot* judge or act for themselves; up to a considerably greater age they are inevitably more or less disqualified for doing so; but women are as capable as men of appreciating and managing their own concerns, and the only hindrance to their doing so arises from the injustice of their present social position. So long as the law makes everything which the wife acquires, the property of the husband, while by compelling her to live with him it forces her to submit to almost any amount of moral and even physical tyranny which he may choose to inflict, there is some ground for regarding every act done by her as done under coercion: but it is the great error of reformers and philanthropists in our time, to nibble at the consequences of unjust power, instead of redressing the injustice itself. If women had as absolute a control as men have, over their own persons and their own patrimony or acquisitions, there would be no plea for limiting their hours of labouring for themselves, in order that they might have time to labour for the husband, in what is called, by the advocates of restriction, *his* home. Women employed in factories are the only women in the labouring rank of life whose position is not that of slaves and drudges; precisely because they cannot easily be compelled to work and earn wages in factories against their will. For improving the condition of women, it should, on the contrary, be an object to give them the readiest access to independent industrial employment, instead of closing, either entirely or partially, that which is already open to them.

§ 10. A second exception to the doctrine that individuals are the best judges of their own interest, is when an individual attempts to judge irrevocably now, what will be best for his interest at some future and distant time. The presumption in favour of individual judgment is only legitimate, where the judgment is grounded on actual, and especially on present, personal experience; not where it is formed antecedently to experience, and not suffered to be reversed even after experience has condemned it. When persons have bound themselves by a contract, not simply to do some one thing, but to continue doing something for ever or for a prolonged period, without any power of revoking the engagement, the presumption which their perseverance in that course of conduct would otherwise raise in favour of its being advantageous to them, does not exist; and any such presumption which can be grounded on their having voluntarily entered into the contract, perhaps at an early age, and without any real knowledge of what they undertook, is commonly next to null. The practical maxim of leaving contracts free, is not applicable without great limitations in case of engagements in perpetuity; and the law should be extremely jealous of such engagements; should refuse its sanction to them, when the obligations they impose are such as the contracting party cannot be a competent judge of; if it ever does sanction them, it should take every possible security for their being contracted with foresight and deliberation; and in compensation for not permitting the parties themselves to revoke their engagement, should grant them a release from it, on a sufficient case being made out before an impartial authority.

§ 11. The third exception which I shall notice, to the doctrine that government cannot manage the affairs of individuals as well as the individuals themselves, has reference to the great class of cases in which the individuals can only manage the concern by delegated agency, and in which the

so-called private management is, in point of fact, hardly better entitled to be called management by the persons interested, than administration by a public officer. Whatever, if left to spontaneous agency, can only be done by joint-stock associations, will often be as well, and sometimes better done, as far as the actual work is concerned, by the state. Government management is, indeed, proverbially jobbing, careless, and ineffective; but so likewise has generally been joint-stock management. The directors of a joint-stock company, it is true, are always shareholders; but also the members of a government are invariably tax-payers; and in the case of directors, no more than in that of governments, is their proportional share of the benefits of good management, equal to the interest they may possibly have in mismanagement, even without reckoning the interest of their ease. It may be objected, that the shareholders, in their collective character, exercise a certain control over the directors, and have almost always full power to remove them from office. Practically, however, the difficulty of exercising this power is found to be so great, that it is hardly ever exercised except in cases of such flagrantly unskilful, or, at least, unsuccessful management, as would generally produce the ejection from office of managers appointed by the government. Against the security afforded by meetings of shareholders, and by their individual inspection and enquiries, may be placed the greater publicity and more active discussion and comment, to be expected in free countries with regard to affairs in which the general government takes part. The defects, therefore, of government management, do not seem to be necessarily much greater, if necessarily greater at all, than those of management by joint-stock.

The true reasons in favour of leaving to voluntary associations all such things as they are competent to perform, would exist in equal strength if it were certain that the work itself would be as well or better done by public officers. These reasons have been already pointed out: the mischief

of overloading the chief functionaries of government with demands on their attention, and diverting them from duties which they alone can discharge, to objects which can be sufficiently well attained without them; the danger of unnecessarily swelling the direct power and indirect influence of government, and multiplying occasions of collision between its agents and private citizens; and the still greater inexpediency of concentrating in a dominant bureaucracy, all the skill and experience in the management of large interests, and all the power of organized action, existing in the community; a practice which keeps the citizens in a relation to the government like that of children to their guardians, and is a main cause of the inferior capacity for political life which has hitherto characterized the over-governed countries of the Continent, whether with or without the forms of representative government*.

But although, for these reasons, most things which are likely to be even tolerably done by voluntary associations, should, generally speaking, be left to them; it does not follow that the manner in which those associations perform their work should be entirely uncontrolled by the government. There are many cases in which the agency, of whatever nature, by which a service is performed, is certain, from the nature of the case, to be virtually single; in which a prac-

* A parallel case may be found in the distaste for politics, and absence of public spirit, by which women, as a class, are characterized in the present state of society, and which is often felt and complained of by political reformers, without, in general, making them willing to recognize, or desirous to remove, its cause. It obviously arises from their being taught, both by institutions, and by the whole of their education, to regard themselves as entirely apart from politics. Wherever they have been politicians, they have shown as great interest in the subject, and as great aptitude for it, according to the spirit of their time, as the men with whom they were cotemporaries: in that period of history (for example) in which Isabella of Castile and Elizabeth of England were, not rare exceptions, but merely brilliant examples of a spirit and capacity very largely diffused among women of high station and cultivation in Europe.

tical monopoly, with all the power it confers of taxing the community, cannot be prevented from existing. I have already more than once adverted to the case of the gas and water companies, among which, though perfect freedom is allowed to competition, none really takes place, and practically they are found to be even more irresponsible, and unapproachable by individual complaints, than the government. There are the expenses without the advantages of plurality of agency; and the charge made for services which cannot be dispensed with, is, in substance, quite as much compulsory taxation as if imposed by law: there are few householders who make any distinction between their "water rate" and their other local taxes. In the case of these particular services, the reasons preponderate in favour of their being performed, like the paving and cleansing of the streets, not certainly by the general government of the state, but by the municipal authorities of the town, and the expense defrayed, as even now it in fact is, by a local rate. But in the many analogous cases which it is best to resign to voluntary agency, the community needs some other security for the fit performance of the service than the interest of the managers; and it is the part of government, either to subject the business to reasonable conditions for the general advantage, or to retain such power over it, that the profits of the monopoly may at least be obtained for the public. This applies to the case of a road, a canal, or a railway. These are always, in a great degree, practical monopolies; and a government which concedes such monopoly unreservedly to a private company, does much the same thing as if it allowed an individual or an association to levy any tax they chose, for their own benefit, on all the malt produced in the country, or on all the cotton imported into it. To make the concession for a limited time is generally justifiable, on the principle which justifies patents for inventions: but the state should either reserve to itself a reversionary property in such public works, or should retain, and freely exercise, the right of fixing a maximum of fares

and charges, and, from time to time, varying that maximum. It is perhaps necessary to remark, that the state may be the proprietor of canals or railways without itself working them; and that they will almost always be better worked by means of a company, renting the railway or canal for a limited period from the state.

§ 12. To a fourth case of exception I must request particular attention, it being one to which, as it appears to me, the attention of political economists has not yet been sufficiently drawn. There are matters in which the interference of law is required, not to overrule the judgment of individuals respecting their own interest, but to give effect to that judgment; they being unable to give effect to it, except by concert, which concert again cannot be effectual unless it receives validity and sanction from the law. For illustration, and without prejudging the particular point, I may advert to the question of diminishing the hours of labour. Let us suppose, what is at least supposable, whether it be the fact or not—that a general reduction of the hours of factory labour from twelve to ten, would be for the advantage of the workpeople: that they would receive as high wages, or nearly as high, for ten hours labour as they receive for twelve. If this would be the result, and if the operatives generally are convinced that it would, the limitation, some may say, will be adopted spontaneously, and there cannot be any need for enforcing it by a legal prohibition. I answer, that it will not be adopted unless the body of operatives bind themselves to one another to abide by it. A workman who refused to work more than ten hours while there were others who worked twelve, would either not be employed at all, or if employed, must submit to lose one-sixth of his wages. However convinced, therefore, he may be that it is the interest of the class to work short time, it is contrary to his own interest to set the example, unless he is well assured that all or most others will follow it. But suppose a general agreement of the whole

class: might not this be effectual without the sanction of law? Not unless enforced by opinion with a rigour practically equal to that of law. For however beneficial the observance of the regulation might be to the class collectively, the immediate interest of every individual would lie in violating it: and the more numerous those were who adhered to the rule, the more would individuals gain by departing from it. If nearly all restricted themselves to ten hours, those who chose to work for twelve would gain all the advantage of the restriction, together with the profit of infringing it; they would get twelve hours wages for ten hours work, and two hours wages besides. I grant that if a large majority adhered to the ten hours, there would be no harm done: the benefit would be, in the main, secured to the class, while those individuals who preferred to work harder and earn more, would have an opportunity of doing so. This certainly would be the state of things to be wished for; and assuming that a reduction of hours without any diminution of wages could take place without expelling the commodity from some of its markets—which is in every particular instance a question of fact, not of principle—the manner in which it would be most desirable that this effect should be brought about, would be by a quiet change in the general custom of the trade; short hours becoming, by spontaneous choice, the general practice, but those who chose to deviate from it having the fullest liberty to do so. Probably, however, so many would prefer the twelve hours work on the improved terms, that the limitation could not be maintained as a general practice: what some did from choice, others would soon be obliged to do from necessity, and those who had chosen long hours for the sake of increased wages, would be forced in the end to work long hours for no greater wages than before. Assuming then that it really would be the interest of each to work only ten hours if he could be assured that all others would do the same, there might be no means of their attaining this object but by converting their supposed mutual agreement into an engagement under penalty, by consenting to have it enforced by law. I do not mean to express an opinion in favour of such an enactement, but it serves to exemplify the manner in which classes of persons may need the assistance of law, to give effect to their deliberate collective opinion of their own interest, by affording to every individual a guarantee that his competitors will pursue the same course, without which he cannot safely adopt it himself.

Another exemplification of the same principle, and one of great practical moment, is afforded by what is known as the Wakefield system of colonization. This system is grounded on the important principle, that the degree of productiveness of land and labour depends on their being in a due proportion to one another; that if a few persons, in a newly-settled country, attempt to occupy and appropriate a large district, or if each labourer becomes too soon an occupier and cultivator of land, there is a loss of productive power, and a great retardation of the progress of the colony in wealth and civilization: that nevertheless the instinct (if such it may be called) of appropriation, and the feelings associated in old countries with landed proprietorship, induce almost every emigrant to take possession of as much land as he has the means of acquiring, and every labourer to become at once a proprietor, cultivating his own land with no other aid than that of his family. If this propensity to the immediate possession of land could be in some degree restrained, and each labourer induced to work a certain number of years on hire before he became a landed proprietor, a perpetual stock of hired labourers could be maintained, available for roads, canals, works of irrigation, &c. and for the establishment and carrying on of the different branches of town industry; whereby the labourer, when he did at last become a landed proprietor, would find his land much more valuable, through access to markets, and facility of obtaining hired labour. Mr. Wakefield therefore proposed to check the premature occupation of land, and dispersion of the people, by putting upon all unap-

propriated lands a rather high price, the proceeds of which were to be expended in conveying emigrant labourers from the mother country.

This salutary provision however has been objected to, in the name and on the authority of what was represented as the the great principle of political economy, that individuals are the best judges of their own interest. It was said, that when things are left to themselves, land is appropriated and occupied by the spontaneous choice of individuals, in the quantities and at the times most advantageous to each person, and therefore to the community generally; and that to interpose artificial obstacles to their obtaining land, is to prevent them from adopting the course which in their own judgment is most beneficial to them, from a self-conceited notion of the legislator, that he knows what is most for their interests, better than they do themselves. Now this is a complete misunderstanding, either of the system itself, or of the principle with which it is alleged to conflict. The oversight is similar to that which we have just seen exemplified on the subject of hours of labour. However beneficial it might be to the colony in the aggregate, and to each individual composing it, that no one should occupy more land than he can properly cultivate, nor become a proprietor until there are other labourers ready to take his place in working for hire; it can never be the interest of an individual to exercise this forbearance, unless he is assured that others will do so too. Surrounded by settlers who have each their thousand acres, how is he benefited by restricting himself to fifty? or what does he gain by deferring the acquisition altogether for a few years, if all other labourers rush to convert their first earnings into estates in the wilderness, several miles apart from one another? If they, by seizing on land, prevent the formation of a class of labourers for wages, he will not, by postponing the time of his becoming a proprietor, be enabled to employ the land with any greater advantage when he does obtain it; to what end therefore should he place himself in what will

appear, to him and others, a position of inferiority, by remaining a labourer when all around him are proprietors? It is the interest of each to do what is good for all, but only if others will do likewise.

The principle that each is the best judge of his own interest, understood as these objectors understand it, would prove that governments ought not to fulfil any of their acknowledged duties—ought not, in fact, to exist at all. It is greatly the interest of the community, collectively and individually, not to rob or defraud one another: but there is not the less necessity for laws to punish robbery and fraud; because, though it is the interest of each that nobody should rob or cheat, it cannot be any one's interest to refrain from robbing and cheating others when all others are permitted to rob and cheat him. Penal laws exist at all, chiefly for this reason, because an even unanimous opinion that a certain line of conduct is for the general interest, does not make it people's individual interest to adhere to that line of conduct.

§ 13. Fifthly; the argument against government interference, grounded on the maxim that individuals are the best judges of their own interest, cannot apply to the very large class of cases, in which those acts of individuals, over which the government claims control, are not done by those individuals for their own interest, but for the interest of other people. This includes, among other things, the important and much agitated subject of public charity. Though individuals should, in general, be left to do for themselves whatever it can reasonably be expected that they should be capable of doing, yet when they are at any rate not to be left to themselves, but to be helped by other people, the question arises, whether it is better that they should receive this help exclusively from individuals, and therefore uncertainly and casually, or by systematic arrangements, in which society acts through its organ the state.

This brings us to the subject of Poor Laws; a subject which would be of very minor importance if the habits of all classes of the people were temperate and prudent, and the diffusion of property satisfactory; but of the greatest moment in a state of things so much the reverse of this, in both points, as that which the British islands present.

Apart from any metaphysical considerations respecting the foundation of morals or of the social union, it will be admitted to be right that human beings should help one another; and the more so, in proportion to the urgency of the need: and none needs help so urgently as one who is starving. The claim to help, therefore, created by destitution is one of the strongest which can exist; and there is *primâ facie* the amplest reason for making the relief of so extreme an exigency as certain to those who require it, as by any arrangements of society it can be made.

On the other hand, in all cases of helping, there are two sets of consequences to be considered; the consequences of the assistance itself, and the consequences of relying on the assistance. The former are generally beneficial, but the latter, for the most part, injurious; so much so, in many cases, as greatly to outweigh the value of the benefit. And this is never more likely to happen than in the very cases where the need of help is the most intense. There are few things for which it is more mischievous that people should rely on the habitual aid of others, than for the means of subsistence, and unhappily there is no lesson which they more easily learn. The problem to be solved is therefore one of peculiar nicety as well as importance; how to give the greatest amount of needful help, with the smallest encouragement to undue reliance on it.

Energy and self-dependence are, however, liable to be impaired by the absence of help, as well as by its excess. It is even more fatal to exertion to have no hope of succeeding by it, than to be assured of succeeding without it. When the condition of any one is so disastrous that his energies

are paralyzed by discouragement, assistance is a tonic, not a sedative: it braces instead of relaxing the active faculties: always provided that the assistance is not such as to dispense with self-help, by substituting itself for the person's own labour, skill, and prudence, but is limited to affording him a better hope of attaining success by those legitimate means. This accordingly is a test to which all plans of philanthropy and benevolence should be brought, whether intended for the benefit of individuals or of classes, and whether conducted on the voluntary or on the government principle.

In so far as the subject admits of any general doctrine or maxim, it would appear to be this,—that if assistance is given in such a manner that the condition of the person helped is as desirable as that of the person who succeeds in doing the same thing without help, the assistance, if systematic and capable of being previously calculated on, is mischievous: but if, while available to everybody, it leaves to every one a strong motive to do without it if he can, it is then for the most part beneficial. This principle, applied to a system of public charity, is that of the Poor Law of 1834. If the condition of a person receiving relief is made as eligible as that of the labourer who supports himself by his own exertions, the system strikes at the root of all individual industry and self-government; and, if fully acted up to, would require as its supplement an organized system of compulsion, for governing and setting to work like cattle, those who had been removed from the influence of the motives that act on human beings. But if, consistently with guaranteeing all persons against absolute want, the condition of those who are supported by legal charity can be kept considerably less desirable than the condition of those who find support for themselves, none but beneficial consequences can arise from a law which renders it impossible for any person, except by his own choice, to die from insufficiency of food. That in England at least this supposition can be realized, is proved by the experience of a long period preceding the close of

the last century, as well as by that of many highly pauperized districts in more recent times, which have been dispauperized by adopting strict rules of poor-law administration, to the great and permanent benefit of the whole labouring class. There is probably no country in which, by varying the means suitably to the character of the people, a legal provision for the destitute might not be made compatible with the observance of the conditions necessary to its being innocuous.

Subject to these conditions, I conceive it to be highly desirable, that the certainty of subsistence should be held out by law to the destitute able-bodied, rather than that their relief should depend on voluntary charity. In the first place, charity almost always does too much or too little: it lavishes its bounty in one place, and leaves people to starve in another. Secondly, since the state must necessarily provide subsistence for the criminal poor while undergoing punishment, not to do the same for the poor who have not offended is to give a premium on crime. And lastly, if the poor are left to individual charity, a vast amount of mendicity is inevitable; and to get rid of this is important, even as a matter of police. What the state may and should abandon to private charity, is the task of distinguishing between one case of real necessity and another. The state must act by general rules. It cannot undertake to discriminate between the deserving and the undeserving indigent. It owes no more than subsistence to the first, and it can give no less to the last. What is said about the injustice of a law which has no better treatment for the merely unfortunate poor than for the ill-conducted, is founded on a misconception of the province of law and public authority. The dispensers of public relief have no business to be inquisitors. Guardians and overseers are not fit to be trusted to give or withhold other people's money according to their verdict on the morality of the person soliciting it; and it would show much ignorance of the ways of mankind to suppose that such persons, even in the almost impossible case of their being qualified, will take the trouble of ascertaining and sifting the past conduct of a person in distress, so as to form a rational judgment on it. Private charity can make these distinctions; and in bestowing its own money, is entitled to do so according to its own judgment. It should understand that this is its peculiar and appropriate province, and that it is commendable or the contrary, as it exercises the function with more or with less discernment. But the administrators of a public fund ought not to be required to do more for anybody, than that minimum which is due even to the worst. If they are, the indulgence very speedily becomes the rule, and refusal the more or less capricious or tyrannical exception.

§ 14. Another class of cases which fall within the same general principle as the case of public charity, are those in which the acts done by individuals, though intended solely for their own benefit, involve consequences extending indefinitely beyond them, to interests of the nation or of posterity, for which society in its collective capacity is alone able, and alone bound, to provide. One of these cases is that of Colonization. If it is desirable, as no one will deny it to be, that the planting of colonies should be conducted, not with an exclusive view to the private interests of the first founders, but with a deliberate regard to the permanent welfare of the nations, afterwards to arise from these small beginnings; such regard can only be secured by placing the enterprise, from its commencement, under regulations constructed with the foresight and enlarged views of philosophical legislators: and the government alone has power either to frame such regulations, or to enforce their observance.

The question of government intervention in the work of Colonization involves the future and permanent interests of civilization itself, and far outstretches the comparatively narrow limits of purely economical considerations. But even with a view to those considerations alone, the removal of

population from the overcrowded to the unoccupied parts of the earth's surface is one of those works of eminent social usefulness, which most require, and which at the same time best repay, the intervention of government.

To appreciate the benefits of colonization, it should be considered in its relation, not to a single country, but to the collective economical interests of the human race. The question is in general treated too exclusively as one of distribution; of relieving one labour-market and supplying another. It is this, but it is also a question of production, and of the most efficient employment of the productive resources of the world. Much has been said of the good economy of importing commodities from the place where they can be bought cheapest; while the good economy of producing them where they can be produced cheapest, is comparatively little thought of. If to carry consumable goods from the places where they are superabundant to those where they are scarce, is a good pecuniary speculation, is it not an equally good speculation to do the same thing with regard to labour and instruments? The exportation of labourers and capital from old to new countries, from a place where their productive power is less, to a place where it is greater, increases by so much the aggregate produce of the labour and capital of the world. It adds to the joint wealth of the old and the new country, what amounts in a short period to many times the mere cost of effecting the transport. There needs be no hesitation in affirming that Colonization, in the present state of the world, is the very best affair of business, in which the capital of an old and wealthy country can possibly engage.

It is equally obvious, however, that Colonization on a great scale can be undertaken, as an affair of business, only by the government, or by some combination of individuals in complete understanding with the government. Emigration on the voluntary principle cannot have any material influence in lightening the pressure of population in the old country, though as far as it goes it is doubtless a benefit to the colony.

Those labouring persons who voluntarily emigrate are seldom the very poor; they are small farmers with some little capital, or labourers who have saved something, and who, in removing only their own labour from the crowded labour-market, withdraw from the capital of the country a fund which maintained and employed more labourers than themselves. Besides, this portion of the community is so limited in number, that it might be removed entirely, without making any sensible impression upon the numbers of the population, or even upon the annual increase. Any considerable emigration of labour is only practicable, when its cost is defrayed, or at least advanced, by others than the labourers themselves. Who then is to advance it? Naturally, it may be said, the capitalists of the colony, who require the labour, and who intend to employ it. But to this there is the obstacle, that a capitalist, after going to the expense of carrying out labourers, has no security that he shall be the person to derive any benefit from them. If all the capitalists of the colony were to combine, and bear the expense by subscription, they would still have no security that the labourers, when there, would continue to work for them. After working for a short time and earning a few pounds, they always, unless prevented by the government, squat on unoccupied land, and work only for themselves. The experiment has been repeatedly tried whether it was possible to enforce contracts for labour, or the repayment of the passage-money of emigrants to those who advanced it, and the trouble and expense have always exceeded the advantage. The only other resource is the voluntary contributions of parishes or individuals, to rid themselves of surplus labourers who are already, or who are likely to become, locally chargeable on the poor-rate. Were this speculation to become general, it might produce a sufficient amount of emigration to clear off the existing unemployed population, but not to raise the wages of the employed: and the same thing would require to be done over again in less than another generation.

One of the principal reasons why Colonization should be a national undertaking, is that in this manner alone can emigration be self-supporting. The exportation of capital and labour to a new country being, as before observed, one of the best of all affairs of business, it is absurd that it should not, like other affairs of business, repay its own expenses. Of the great addition which it makes to the produce of the world, there can be no reason why a sufficient portion should not be intercepted, and employed in reimbursing the outlay incurred in effecting it. For reasons already given, no individual, or body of individuals, can reimburse themselves for the expense; the government, however, can. It can take from the annual increase of wealth, caused by the emigration, the fraction which suffices to repay with interest what the emigration has cost. The expenses of emigration to a colony ought to be borne by the colony; and this, in general, is only possible when they are borne by the colonial government.

Of the modes in which a fund for the support of colonization can be raised in the colony, none is comparable in advantage to that which was first suggested, and has since been so ably and perseveringly advocated, by Mr. Wakefield: the plan of putting a price on all unoccupied land, and devoting the proceeds to emigration. The unfounded and pedantic objections to this plan have been answered in a former part of this chapter: we have now to speak of its advantages. First, it avoids the difficulties and discontents incident to raising a large annual amount by taxation; a thing which it is almost useless to attempt with a scattered population of settlers in the wilderness, who, as experience proves, can seldom be compelled to pay direct taxes, except at a cost exceeding their amount; while in an infant community indirect taxation soon reaches its limit. The sale of lands is thus by far the easiest mode of raising the requisite funds. But it has other and still greater recommendations. It is a beneficial check upon the tendency of a population of colonists to adopt the tastes and inclinations of savage life,

and to disperse so widely as to lose all the advantages of commerce, of markets, of separation of employments, and combination of labour. By making it necessary for those who emigrate at the expense of the fund, to earn a considerable sum before they can become landed proprietors, it keeps up a perpetual succession of labourers for hire, who in every country are a most important auxiliary even to peasant proprietors: and by diminishing the eagerness of agricultural speculators to add to their domain, it keeps the settlers within reach of each other for purposes of co-operation, arranges a numerous body of them within easy distance of each centre of foreign commerce and non-agricultural industry, and ensures the formation and rapid growth of towns and town products. This concentration, compared with the dispersion which uniformly occurs when unoccupied land can be had for nothing, greatly accelerates the attainment of prosperity, and enlarges the fund which may be drawn upon for further emigration. Before the adoption of the Wakefield system, the early years of all new colonies were full of hardship and difficulty: the last colony founded on the old principle, the Swan River settlement, being one of the most characteristic instances. In all subsequent colonization, the Wakefield principle has been acted upon, though imperfectly, the price of land being generally fixed too low, and a part only of the proceeds being devoted to emigration: yet wherever it has been introduced at all, as in South Australia, Port Philip, and New Zealand, the restraint put upon the dispersion of the settlers, and the influx of capital caused by the assurance of being able to obtain hired labour, has, in spite of many difficulties and much mismanagement, produced a suddenness and rapidity of prosperity more like fable than reality. The oldest of the Wakefield colonies, South Australia, is scarcely twelve years old; Port Philip is still more recent; and they are probably at this moment the two places, in the known world, where labour on the one hand, and capital on the other, are the most highly remunerated.

The self-supporting system of colonization, once established, would increase in efficiency every year; its effect would tend to increase in geometrical progression: for since every able-bodied emigrant, until the country is fully peopled, adds in a very short time to its wealth, over and above his own consumption, as much as would defray the expense of bringing out another emigrant, it follows that the greater the number already sent, the greater number might continue to be sent, each emigrant laying the foundation of a succession of other emigrants at short intervals without fresh expense, until the colony is filled up. It would therefore be worth while, to the mother country, to accelerate the early stages of this progression, by loans to the colonies for the purpose of emigration, repayable from the fund formed by the sales of land. In thus advancing the means of accomplishing a large immediate emigration, it would be investing that amount of capital in the mode, of all others, most beneficial to the colony; and the labour and savings of these emigrants would hasten the period at which a large sum would be available from sales of land. It would be necessary, in order not to overstock the labour-market, to act in concert with the persons disposed to remove their own capital to the colony. The knowledge that a large amount of hired labour would be available, in so productive a field of employment, would ensure a large emigration of capital from a country, like England, of low profits and rapid accumulation: and it would only be necessary not to send out a greater number of labourers at one time, than this capital could absorb and employ at high wages.

Inasmuch as, on this system, any given amount of expenditure, once incurred, would provide not merely a single emigration, but a perpetually flowing stream of emigrants, which would increase in breadth and depth as it flowed on; this mode of relieving overpopulation has a recommendation, not possessed by any other plan ever proposed for making head against the consequences of increase without restraining

the increase itself: there is an element of indefiniteness in it; no one can perfectly foresee how far its influence, as a vent for surplus population, might possibly reach. There is hence the strongest obligation on the government of a country like our own, with a crowded population, and unoccupied continents under its command, to build, as it were, and keep open, a bridge from the mother country to those continents, by establishing the self-supporting system of colonization on such a scale, that as great an amount of emigration as the colonies can at the time accommodate, may at all times be able to take place without cost to the emigrants themselves.

§ 15. The same principle which points out colonization, and the relief of the indigent, as cases to which the principal objection to Government interference does not apply, extends also to a variety of cases, in which important public services are to be performed, while yet there is no individual specially interested in performing them, nor would any adequate remuneration naturally or spontaneously attend their performance. Take for instance a voyage of geographical or scientific exploration. The information sought may be of great public value, yet no individual would derive any benefit from it which would repay the expense of fitting out the expedition; and there is no mode of intercepting the benefit on its way to those who profit by it, in order to levy a toll for the remuneration of its authors. Such voyages are, or might be, undertaken by private subscription; but this is a rare and precarious resource. Instances are more frequent in which the expense has been borne by public companies or philanthropic associations; but in general such enterprises have been conducted at the expense of government, which is thus enabled to entrust them to the persons in its judgment best qualified for the task. Again, it is a proper office of government to build and maintain lighthouses, establish buoys, &c., for the security of navigation: for since it is impossible that the ships at sea, which

are benefited by a lighthouse, should be made to pay a toll on the occasion of its use, no one would build lighthouses from motives of personal interest, unless indemnified and rewarded from a compulsory levy made by the state. There are many scientific researches, of great value to a nation and to mankind, requiring assiduous devotion of time and labour, and not unfrequently great expense, by persons who can obtain a high price for their services in other ways. If the government had no power to grant indemnity for expense, and remuneration for time and labour, thus employed, such researches could only be undertaken by the very few persons who, with an independent fortune, unite technical knowledge, laborious habits, and either great public spirit, or an ardent desire of scientific celebrity*.

* Connected with this subject is the question of providing, by means of endowments or salaries, for the maintenance of what has been called a learned class. The cultivation of speculative knowledge, though one of the most useful of all employments, is a service rendered to the community collectively, not individually, and one consequently for which it is, *primâ facie*, reasonable that the community collectively should pay; since it gives no claim on any individual for a pecuniary remuneration: and unless a provision is made for such services from some public fund, there is not only no encouragement to them, but there is as much discouragement as is implied in the impossibility of gaining a living by such pursuits, and the necessity consequently imposed on most of those who would be capable of them, to employ the greatest part of their time in gaining a subsistence. The evil, however, is greater in appearance than in reality. The greatest things, it has been said, have generally been done by those who had the least time at their disposal; and the occupation of some hours every day in a routine employment, has often been found compatible with the most brilliant achievements in literature and philosophy. Yet there are investigations and experiments which require not only a long but a continuous devotion of time and attention: there are also occupations which so engross and fatigue the mental faculties, as to be inconsistent with any vigorous employment of them upon other subjects, even in intervals of leisure. It is highly desirable, therefore, that there should be a mode of ensuring to the public the services of scientific discoverers, and perhaps of some other classes of savans, by affording them the means of support consistently with devoting a sufficient portion of time to their peculiar pursuits.

It may be said generally, that anything which it is desirable should be done for the general interests of mankind or of future generations, or for the present interests of those members of the community who require external aid, but which is not of a nature to remunerate individuals or associations for undertaking it, is in itself a suitable thing to be undertaken by government: though, before making the work their own, governments ought always to consider if there be any rational probability of its being done on what is called the voluntary principle, and if so, whether it is likely to be done in a better or more effectual manner by government agency, than by the zeal and liberality of individuals.

§ 16. The preceding heads comprise, to the best of my judgment, the whole of the exceptions to the practical

The fellowships of our Universities are an institution excellently adapted for such a purpose; but are hardly ever applied to it, being bestowed, at the best, as a reward for past proficiency, in committing to memory what has been done by others, and not as the salary of future labours in the advancement of knowledge. In some countries Academies of science, antiquities, history, &c., have been formed, with emoluments annexed. The most effectual plan, and at the same time the least liable to abuse, seems to be that of conferring Professorships, with duties of instruction attached to them. The occupation of teaching a branch of knowledge, at least in its higher departments, is a help rather than an impediment to the systematic cultivation of the subject itself. The duties of a professorship almost always leave much time for original researches, and the greatest advances which have been made in the various sciences, both moral and physical, have originated with those who were public teachers of them, from Aristotle and Plato to the great names of the Scotch, French, and German Universities. I do not mention the English, because their professorships are, as is well known, little more than nominal. In the case, too, of a lecturer in a great institution of education, the public at large has the means of judging, if not the quality of the teaching, at least the talents and industry of the teacher; and it is more difficult to misemploy the power of appointment to such an office, than to job in pensions and salaries to persons not so directly before the public eye.

maxim, that the business of society can be best performed by private and voluntary agency. It is, however, necessary to add, that the intervention of government cannot always practically stop short at the limit which defines the cases intrinsically suitable for it. In the particular circumstances of a given age or nation, there is scarcely anything, really important to the general interest, which it may not be desirable, or even necessary, that the government should take upon itself, not because private individuals cannot effectually perform it, but because they will not. At some times and places there will be no roads, docks, harbours, canals, works of irrigation, hospitals, schools, colleges, printing presses, unless the government establishes them; the public being either too poor to command the necessary resources, or too little advanced in intelligence to appreciate the ends, or not sufficiently practised in conjoint action to be capable of the means. This is true, more or less, of all countries inured to despotism, and particularly of those in which there is a very wide distance, in civilization, between the people and the government; as in those which have been conquered and are retained in subjection by a more energetic and more cultivated people. In many parts of the world, the people can do nothing for themselves which requires large means and combined action; all such things are left undone, unless done by the state. In these cases, the mode in which the government can most surely demonstrate the sincerity with which it intends the greatest good of its subjects, is by doing the things which are made incumbent on it by the helplessness of the public, in such a manner as shall tend not to increase and perpetuate, but to correct that helplessness. A good government will give all its aid in such a shape, as to encourage and nurture any rudiments it may find of a spirit of individual exertion. It will be assiduous in removing obstacles and discouragements to voluntary enterprize, and in giving whatever facilities and whatever direction and guidance may be necessary; its pecuniary means will be supplied, when practicable, in aid of private efforts rather than in supersession of them, and it will call into play its machinery of rewards and honours to elicit such efforts. Government aid, when given merely in default of private enterprise, should be so given as to be as far as possible a course of education for the people in the art of accomplishing great objects by individual energy and voluntary cooperation.

I have not thought it necessary here to insist on that part of the functions of government which all admit to be indispensable, the function of prohibiting and punishing such conduct on the part of individuals in the exercise of their freedom, as is clearly injurious to other persons, whether the case be one of force, fraud, or negligence. Even in the best state which society has yet reached, it is lamentable to think how great a proportion of all the efforts and talents in the world are employed in merely neutralizing one another. It is the proper end of government to reduce this wretched waste to the smallest possible amount, by taking such measures as shall cause the energies now spent by mankind in injuring one another, or in protecting themselves against injury, to be turned to the legitimate employment of the human faculties, that of compelling the powers of nature to be more and more subservient to physical and moral good.

THE END.

LONDON:
HARRISON AND CO., PRINTERS,
ST. MARTIN'S LANE.