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A FALSE EQUATION

THE PROBLEM OF THE GREAT TRUST



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A FALSE EQUATION

THE PROBLEM OF THE
GREAT TRUST

BY

MELVILLE M. BIGELOW

PH.D. HARVARD

'Pactum serva'

EDWARD I

BOSTON

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Revised

PREFACE

THE following pages discuss the departure of the State from the Great Trust charged upon it in regard to Equality, and propose a remedy. The argument is this: The State is not fulfilling the Trust undertaken by it, to establish and maintain equality as far as that is practicable in the government of men; an undertaking which means, in effect, that the State shall provide a reasonable mode of regulating Inequality. The failure is due to want of men sufficiently equipped for the requirement. To treat existing adjustments as a performance of the Trust is to support a False Equation. There is probably energy enough for remedy, for however true it may be that human, like inanimate, energy is slowing down, it appears to remain relatively the same. The remedy is to be found in substituting for current forms of education a system which shall Organize the Brain, so that energy

may be set free and then directed effectively to the purpose. Education thus conducted should indeed be competent to provide for all purposes; the Great Trust is only an instance.

The argument is followed by an Illustration.

In 1902 Brooks Adams published *The New Empire*. In 1903, before I had seen that work, I asked Mr. Adams to join me in the new undertaking of unity in the instruction of the Law School of Boston University. He accepted, and from that time to this has been contributing of his great energy and other gifts to the desired result. I owe him a debt greater than I can pay, but not greater than I wish to acknowledge.

The system of unity in education, worked out at some length in these pages, is foreshadowed in the Introduction to *The New Empire*, and has since been stated more or less fully, from time to time, by Mr. Adams and myself; in *Centralization and the Law*, published in 1906, and particularly in two addresses delivered in February, 1908, and published as a Bulletin of the Law School mentioned, under the title of *Unity in Modern Education*. The present undertaking

PREFACE

vii

puts the subject from the point of view of psychophysics, or Mental Energy and the Brain; psychology of habit lies at the foundation of the problem.

MELVILLE M. BIGELOW

Boston, January 1, 1911

ANALYSIS

CHAPTER I	PAGE
THE WEAKNESS OF THE STATE . .	1-100
<i>a.</i> Privilege	4-31
(1) Coal Strike	5-7
(2) Milk Supply	8-20
(3) Railways	21-31
<i>b.</i> Disappearing Industries	32-45
(1) Tin Dross	32-35
(2) Steamship Industry	36-45
(3) Iron	46-51

ERRATUM

On page 79, fourth line from the bottom,
for CHOICE read WILL.

(1) Dissipation of Energy	102-104
(2) Federal Constitution	123-136
(3) Defective Modes of Education	136-171
<i>b.</i> Organized Education	172-204
<i>c.</i> Illustration	205-218

TABLE

THE TABLES OF THE
THE CHINESE AND
THE CHINESE AND

ANALYSIS

CHAPTER I	PAGE
THE WEAKNESS OF THE STATE . .	1-100
<i>a.</i> Privilege	4-31
(1) Coal Strike	5-7
(2) Milk Supply	8-20
(3) Railways	23-25
<i>b.</i> Disintegrating Tendencies . .	31-56
(1) The Family	32-56
(2) Shortcomings of Law . .	56-90
(3) Sensational Press . . .	90-94
<i>c.</i> Conclusion — Nature of the Weakness.	94-100
CHAPTER II	
THE REMEDY	101-204
<i>a.</i> Difficulties	101-171
(1) Dissipation of Energy .	103-123
(2) Federal Constitution . .	123-136
(3) Defective Modes of Edu- cation	136-171
<i>b.</i> Organized Education	172-204
<i>c.</i> Illustration	205-218

A FALSE EQUATION

CHAPTER I

THE WEAKNESS OF THE STATE

HUMAN sovereignty, in its internal relations, appears in two forms; first, in the duties of the subject to the Sovereign, and secondly, in the duties of the Sovereign to the subject. The first of these is direct and immediate; while the second, being usually in the background, comes in great part to be overlooked. But quite as much turns upon the duty of the Sovereign to the subject as upon the converse case; and the present in particular is a time for considering and emphasizing the fact.

These pages accordingly deal with the Sovereign's duty to the subject; they will attempt to show how that duty, in its most

fundamental aspect, has been regarded, the difficulties of the duty, and how they should be met. But there is an intermediate step of first importance. In England the organized State, in King and Parliament, is made Sovereign; in this country the people at large are the Sovereign, while the organized State is their agent in trust, to carry out their will. In other words, the American State is a trustee for all the people collectively, as the body politic, and individually, in their personal relations.

Now the fundamental duty imposed in this country by the Sovereign upon the State—imposed as the Great Trust—is that the State shall establish and maintain Equality of men before the law, in the general sense of providing, as far as that is possible in the government of men, that all citizens shall have equal opportunity in the pursuits and enjoyment of life, and that inequalities shall be subject to regulation by the State. That Trust the State is

bound to cherish and perform as the very ground and condition of its existence; it cannot fail of substantial performance without endangering the stability of the social fabric set up by the people.

The following pages will furnish evidence that the State has not faithfully kept the Trust; they will indicate in what respect the State has failed; and they will offer some considerations upon the nature of the remedy to be applied, to overcome the sinister influences at work. To put it another way, directed to the very point upon which the difficulty is believed to turn, the present chapter will, it is apprehended, make it clear that men have not been found who have met the requirements of the Trust; and the second chapter will attempt to point out the way of supplying men sufficient for the purpose. It will not be enough to point out the shortcomings of the State; and it would be idle to follow the custom of calling the public to the rescue, for the

public is too much effected, as will be seen, by the influences in question. Men must be *produced* to meet the needs; that is the very heart of the discussion.

There are two great classes of cases in which the State has been remiss in keeping the Trust; one of them being in reference to privilege or monopoly, the other in references to tendencies towards disintegration of the bonds of authority. The evidence on these points will be furnished in the present chapter. The facts however are so plain and striking as to require no more than a general statement; there can be no danger that a general statement of facts so patent will be misleading. Indeed wherever specific evidence appears to be desirable, it will be given.

Consider then first the relation of the State to privilege, that is, to the efforts of privilege to establish itself unduly — contrary to the Trust — in the State. These

efforts have always been powerful and persistent, according to the particular purpose to be attained. Privilege further is apt to harbor hostile forces within itself, the opposing sides being at one, in proceeding to their ends, only in unwillingness to subordinate their private interests to rights of the general public which conflict with them. A struggle between the monopolistic contentions of capital and labor, or what is practically the same thing, of capital and production, is the common case.

A few years ago, in 1902-3, the country was brought nigh the point of revolt against the pretensions of both capital and labor, in what is known as the coal 'famine,' forced upon the country as that was, with coal enough within reach to burst the bins of transportation. In disregard, and more or less in defiance, of the public, contending mine-owners and miners, assuming to control price and output, caused a dearth of coal to prevail for months, extending through

midwinter, while the helpless consumer could only watch and suffer. If disaster was finally averted, it was not by the paramount authority and power of the State, the Great Trustee, but by the consent of the two contending parties, secured by private intervention. The State was deemed legally, and it was actually, powerless to intervene and put an end to the distress; the authority of the State was denied by both contestants, and considered doubtful by most others; the State itself looked on helpless and bewildered over its own undoing. It does not affect the case that order was brought about largely by the energy of a President of the United States; he did not act in his official capacity, further than to order an investigation of little worth; not even he believed the authority of the State adequate to the main purpose. It was not merely politic, as the President appears to have thought, to obtain the consent of those who were flouting any authority he might possess as

head of the State, it was the only way out of chaos. There was no third party to the contest; the agreement reached was not tripartite.¹ Plainly at that time men of light and leading were wanting to vindicate the supremacy and trusteeship of the State; one of the worst and most general of all possible disasters did not bring forward the men — because apparently there were none to be had. The trusteeship of the State, however fundamental in theory, however plainly affirmed as doctrine, was in fact

‘a painted ship
Upon a painted ocean.’

That it had been a reality in the colonial era had been forgotten; indeed if the common practice of that time had been known, the precedent would probably have been put aside as antiquated and peculiar, arising in the time of men’s ignorance.²

Such is one of the ways of privilege; the State, at least the Federal State, has no power over it when privilege asserts a right

to settle its disputes in regard to the production of commodities of life. The title of the Federal State is successfully denied ; successfully denied by the virtual admission of the Federal Executive himself. Privilege fortifies itself accordingly, for the time. It is a question of energy, in which the energy of privilege is greater than that of the State ; the official energy of an otherwise strong Executive is reserved for things over which his authority is clearer.

Milk supplies in New York and Boston have lately been furnishing a similar illustration, affecting local State government. The result has indeed been somewhat more satisfactory in relation to public energy, for public steps have been taken in the matter ; but the whole business has been significant of privilege. The situation in New York may be paraphrased from a concise and painstaking report of the matter, which recently appeared in a leading newspaper : —³

The Attorney General of the State concluded an investigation into troubles of the milk supply of New York city, by declaring that a monopoly existed between producers and contractors, which regulated the supply and fixed the price of milk at will, and unjustly to the customer. The investigation showed that the milk supply of New York city was controlled by a corporation of New Jersey formed to evade an injunction declared by the New York courts against certain former corporations. These companies had fixed the price to be paid to producers and the price to be paid by consumers; there being little if any competition. On the first of November, 1909, practically all the dealers in bottled milk raised the price; concert was clear, and there was plain intimidation of independent dealers who were attempting to maintain the former price. The contractors professed that the increase in price was due to demands of the producers and increased

cost of handling. 'But it was proved by an investigation of the books of one large corporation that a net profit of twenty-eight per cent. on the capital invested had been made the previous year, and that, at the' former price, 'the company had for ten years, with one or two exceptions, paid an annual dividend of six per cent. on its preferred stock and ten per cent. on its common stock — three-fifths of which was water — and also had accumulated a surplus of over \$8,000,000. Another corporation showed an earning in the year previous of one hundred and twenty per cent. on its tangible assets, a twenty-two per cent. dividend on its full capitalization for the year 1909, twelve per cent. dividends for eight consecutive years and a surplus of \$962,627 on an original capital of \$500,000, of which \$300,000 represented good will. These were conditions attending the advance of the retail price.'

The Attorney General accordingly recom-

mended as the only adequate remedy, that the State exercise its power to fix the price of milk—that to be charged to the consumer and that to be paid to the producer. The special deputy Attorney General in actual charge of the investigation has contributed an article to the press in support of this recommendation; and there the matter now rests, with the complaint of the public awaiting in doubt to be heard—a complaint which probably would have been stifled altogether but for the action of the Attorney General.⁴ As it is, ‘the State still hesitates to assert its power, and lacks the necessary machinery for performing its duty in the protection of the people.’ Whether it will prove equal to the occasion remains to be seen. ‘The people have not quite appreciated the necessity of State interference in relation to commodity prices.’ The Attorney General is a little ahead of public opinion. Even if the State does interfere, the conduct of the accused parties is a com-

mentary on the energy of the public for years before, a public whose supineness in general had made possible such conduct; for it was not a case like burglary or theft, a sudden outbreak against the majesty and authority of the law, but the long-continued assumption of a right lodged, if anywhere, in sovereignty alone. It is a case of privilege usurping sovereignty — if the people of New York have the energy to declare it such.

The condition of things in Massachusetts is not less worthy of notice. Milk contractors and milk producers were lately engaged in bitter strife over prices of milk. On May 2, 1910, a leading newspaper of Boston contained an important editorial upon *The Milk Problem*.⁵ The writer began by declaring that the State could not compel arbitration between the contractors and the producers; and voluntary arbitration between them would not work, for the arbitrators could not act over the interest of

the unrepresented consumer ; whose interest was, in reality, the one which warranted the State's interference. There was no reason for interfering between the private interests. 'But because the public interest in an essential food supply is affected, it is the duty of the State,' said the writer of the editorial, 'to take cognizance of the situation and to exercise such power as it has for the public welfare.' The writer argued the point from the common law, from the Federal anti-trust law and the anti-monopoly laws which most of the States have enacted ; 'although,' he significantly and truly adds, 'the majority of the latter are dead-letters as applied to the control of markets of the most ordinary supplies. Of late,' continues the writer, 'there have been frequent reminders that this somewhat forgotten function of the State must be recalled, and many who have studied the problem of the cost of living have become convinced that in the scheme of State gov-

ernment of the future there should be some designated court or authority to which the consumer could appeal for a determination of his rights in equity against an arbitrary control of his market for the necessities of life. Already we have our Railroad Commissions, and our Board of Gas and Electric Light Commissions, to protect the rights of consumers and users of these public services, and we are progressing towards the regulation of telegraph and telephone rates. It is not inconsistent with this policy . . . that there should be similar State authority for the regulation and supervision of the supply and distribution of the necessities of life.'

The editorial writer proceeded to review the facts which had appeared in the strife in question. There was ample warrant, on the statements of either one of the special interests, which were then under public investigation, for State interference, in the fact that there was a practical monopoly by

them of the milk market. 'The producers claim that they have such control of the supply that they can force the contractors to come to their terms, by withholding their product,' which they proceeded to do. 'The contractors, on the other hand, claim that they are masters of the situation, and can compel the producers to yield,' which they proved in part by obtaining supplies of milk from New York.

An investigation of the milk supply from the producer to the consumer, growing out of this dispute, was soon afterwards ordered by the Legislature; upon which a report was made on May 27. The Report declared that the contractors in question could practically determine any question of policy for the whole milk business; they had had, and now had, the power to fix arbitrarily the price of milk to be paid to the producer, and they had long fixed prices accordingly, their domination tending to create a monopoly and to restrain competi-

tion in the supply and price of milk. The restriction of the supply was admitted; all milk cars operated in Massachusetts were leased to the milk contractors and in great part manned by their own employees; milk carried in these milk cars was properly cooled in summer and warmed in winter, to preserve the milk, while milk not shipped in these cars (that is, milk shipped by outsiders) could be carried only in ordinary baggage or freight cars, which was 'unfair and ought not to be tolerated.' The Report went on to recommend that the railroads should own, control, operate and man the cars for transporting milk, as common carriers, and should run their cars, where the traffic was sufficient to warrant, and provide caretakers and use the necessary means for preserving the milk. It was also recommended that the production of milk near the point of consumption should be encouraged by the use of trolley lines as milk carriers; it was found that

present prices were sufficient to give contractors a fair profit; and it was declared that, as the subject affected the health of the entire community, 'more especially in our cities where congestion generally prevails and where children are almost universally dependent upon milk for food, the committee has kept constantly in mind the requirements of the consumers,' which were accordingly specified. Better inspection was recommended, a work to be 'done only by some central authority, which should result in an efficient and uniform system.' To formulate such a system 'would consume much time. . . . It would be wise to require the dairy bureau to consider this subject and to present to the next general court [the Legislature] a bill concerning the subject of inspection in the manner suggested.' ⁶

Producers and consumers now adjusted their differences by compromise, advancing the price of milk from the first of July.

‘This action,’ says another editorial in the newspaper above quoted, ‘is arbitrary on the part of the contractors. There is no danger of competition. The producers having been satisfied by one-half their original demand . . . the possibility of competition is removed. And the consumer, who must buy milk, cannot strike and has no recourse available unless in some form or other the power of the State intervenes in protection of his rights.’

The same editorial, after commending legislation proposed in Canada concerning industrial pursuits, declares that some such legislation ‘must come. . . . In some form the power of the State must be made available for the protection of the individual against combination. The principal applies to other commodities as well as to milk, to the “regulation” of the butter market by the Elgin board, to the arbitrary “regulation” of the beef market by the packers, to the control of numerous other markets by power-

ful cartels. . . . Announcement has been made that the price of milk is to be nine cents a quart. The mothers and the babies can't strike against the advance. What can they do about it? And what is the State — guardian neither of the milk contractors nor the milk producers alone, but of the general interest, which includes that of the consumer — going to do about it? Will the consumers be granted a special legislative commission and given a hearing? They have a right to demand it.'

The answer came a few days later; the following editorial note in the same newspaper shows what it was:—

'UP GOES THE PRICE OF MILK.

'The public was forewarned of the advance in the price of milk. Had it not been, what difference would it have made? Or had the advance been to ten cents, instead of nine, or even to eleven, what difference would it have made? Milk is a practical necessity of life. The consumer must

buy it from men who have it to sell. If there is a substantial monopoly controlling the available supply here in Boston, and if a combination exists between producers and distributors by which that monopoly of supply is made practically invincible, what can the consumer do but accept the schedule of prices which is made for him? He can't do much at the present time, but if the State offered him the same protection against excessive charges for the necessities of life that it affords him in his dealings with the monopolies of transportation or of other so-called public services, he could do something. Think this over.'

In the general discussion of the milk supply the feebleness of public energy against privilege is plainly brought out. Comment here is unnecessary.

Privilege sometimes takes another form and denies the supremacy of the State when the State is actually proceeding to assert its authority; succeeding it may be in the end

by a change of form, or by asserting some constitutional protection — in either case proving itself superior to the representatives of the public. The prosecution of the railway combination in the Northern Securities Case is an illustration of the success of privilege in the first way.⁷ The government indeed obtained judgment for the dissolution of the combination, and dissolution followed ; only to assume another form, in which the cleverness of the railways securely fortified itself. The State was beaten, for want of energy. The prosecution of the Beef Trust is an illustration of the success of privilege in the second way ; the parties could not be compelled to give testimony against themselves — the Federal Constitution protected them. The twentieth century had consented to be bound by the eighteenth.

When it is noticed how easily and effectively the Legislature acted in such cases

in early times, it will be seen how far privilege has gone towards acquiring functions of the State, and how far energy on the part of the State has been stifled. Now it is made a question whether the State has any right to intervene, and even where the right is asserted, the expediency of any exercise of it is denied if the power of the State is not openly challenged. Great energy will be required to regain the lost ground and enable the State to maintain its function and its trust. Where are the men equal to the purpose?

The only question for consideration in these pages, it should be said, is of the energy of the State to maintain the Trust in favor of Equality, which it has undertaken; a trust, it must be noticed, which it still assumes, however it may have become obscured by disuse. Whether it should have assumed such a trust, whether it might not be advisable for the State to face about and take the side of privilege, is not the

question. Whatever the State undertakes to do, it should have energy to carry out. The organized State, acting upon the mandate of the sovereign power, professes equality as far as practicable, and hence it must not yield to unreasonable inequality; so far as it does yield this makes evidence that men of energy to direct it are wanting. There is no law whatever to bind the Sovereign, in regard to the great questions under consideration beyond that relating to consent; and so far as the Sovereign's dealings with its citizens are concerned, that consent may be withdrawn whenever the Sovereign wills and is able; it is nothing at last but a question of energy.

The outstanding illustration of the railways as a subject of privilege is so constantly before the public eye, and is always so imperative and direct, as to have become familiar to every one, and does not require

particular restatement here ; especially since the constitutional side of the fight has been won by the State. That was crucial. Sovereignty must hold the highways or perish in time of trouble, as the Debs' Case⁸ showed; and the railways are the great highways of the land. The railway companies could not possess the railways as private property; that would be to make them partners in sovereignty — chief partners; the railways must be regarded as agencies of the State. The State might construct them for itself, as in the case of wagon roads, and sometimes it does so, in peace as well as in war; if however the State choose to permit private interests to construct the roads, as usually it has done, this is only a concession in the way of an agency. The State is still supreme and may regulate the railways; it might at any time take complete possession of them, subject only to the duty to make reasonable compensation, whatever that might be — which indeed is the great railway

question of the time. This constitutional victory of the State is significant; it makes for equality in that monopoly is brought so far under State control. Meantime the State is working out some of the consequences of its success, in the way of increasing its hold upon the public service corporations. But on such questions as the valuation of the railways, the railway companies have thus far succeeded in repelling the interference of the State to any serious extent. There lies a great legal battleground of the immediate future; for valuation of course determines the amount upon which the railways may rest their claim against the public of earnings as belonging to themselves, and hence of the rates which they may charge, of the interest which they may require the public to pay upon their investment and rights. They must have a 'fair return' on the valuation, so far as that valuation reasonably represents their own actual investment and just rights; but that

is for the State the very fighting ground of the subject.

In the train of the constitutional victory over the railways as highways comes on the other hand the business of administration, which will strain ability and energy to the utmost. Railway managers, in general unfriendly to the idea of State agency, are ready to believe that the State will find here that it has reached the breaking point, and that administration will in the end prove that the State has won a barren victory and cause it to give up its contention for control.

It should be noticed that the particular form which privilege takes, whether in connection with production or transportation, is in America mainly economic; and of course in nature it is universally monopolistic. It is the opposite of freedom, as seen for instance in freedom of contract. Beginning in freedom, the end is monopoly, by

reason of the greater power and resources of the greater competitor, who buys out or freezes out his weaker rival. Freedom of contract (finally completed in England in 1813, by the repeal of the laws of Elizabeth for regulating prices, which had been in operation two hundred and fifty years) gave place, so far as prices of commodities were concerned, before the end of the nineteenth century, to monopoly; not to the monopoly which before had existed in England, which was national, governmental, but to private monopoly. That is where the difficulty really lies; the public is not to be allowed to have the monopoly, if private interests can prevent. Monopoly is apt to be the result of economic conditions and is likely to be final, because men are unequal in ability and invention helps the ablest; and the question is, who is to have charge of it? If private interests are to retain control, then inequality, as far as private interests venture to go without bringing on revolu-

tion, is to prevail; if the State is to have the control then the State will have to see to it that there is fairness in the dealings of the monopoly. How serious a matter that must be, how high an order of ability, how much energy, will be required for the discharge of the duty, has been made a question by other men. The chief difficulties will be constitutional—but perhaps only of interpretation, of which later—as well as administrative; the constitutional difficulties arising from the endeavor to adjust the affairs of the twentieth century, with their newness, their complexity and their insistence, to comparatively primitive conceptions of the eighteenth. ‘Taking our institutions,’ says Brooks Adams, ‘as they are, constructed with a view to minimize the action of society in its corporate capacity and considering the scope of the readjustment which would be needed to develop a central intelligence which could satisfactorily regulate prices in food, fuel, clothing, metals, build-

ing-materials, transportation, labor, and a thousand other commodities we perceive the magnitude of the task.' ⁹ And then it must be remembered that with constantly increasing population, density and massing in the cities, the difficulty and the cost of administration and control will constantly increase; but this vast and growing difficulty and expense must be met if the State, with the theory of equality at its foundation, is to be sustained. America knows how to increase wealth as other nations do not; but America has not learned how, as others have, to prevent waste. America has energy, but something more is required—the proper direction of it. That is part of the great subject of education.

While the final success of privilege might result only in a change of the form of the State, substituting government by the few for government by all, disintegration, on the other hand, must at last make an end of

organized government altogether. Against that, privilege as well as the public sincerely and earnestly protests. But notice the common irony of it! Privilege is not merely an alternative of equality, which it opposes, but, especially in the attempt of great corporations and labor unions to escape public control and establish themselves as monopolies, privilege is itself chief promoter of discorporate tendencies; the more so as the corporations succeed — the object they seek makes for undoing the political stability they desire. The same is true of privilege in general; it always has been so; it always will be so, until privilege gains the day entirely (if that should ever happen) and then proves equal to the occasion by maintaining order while showing itself to be, what many good men have thought and think ideal, a true oligarchy, a government in fact of the best men — if that could be made to satisfy the disfranchized public. Meantime, while that consummation is far off, the gains

made by privilege, the proofs that privilege is becoming entrenched, the discriminations which it succeeds in fixing upon the public — all this serves dissension in the State, and little by little, and now and again by open defiance, turns dissension into repudiation of duty, repudiation of duty into contempt for law, and contempt for law into a general loosening of the ties which bind men in the State. Influences of the kind are working their way plainly throughout the land; he who runs may read.

Such are the tendencies of privilege or monopoly. By the side of these may be set certain tendencies of an opposite nature; tendencies, that is to say, against the very existence of authority. The worst of these take the form of disintegration of the family; and nothing is so difficult to deal with. These evils indeed are in many cases openly justified, justified in the very name of education. On the woman's side it appears in

its first stages in what is sometimes called the 'revolt of the daughters,' in itself not a danger to the State or perhaps to the family. It is a struggle, as it has been called, 'for moral, social and economic independence,' as 'the natural result of education;' which in view of the education generally carried on in the schools might be taken perhaps in a different sense from that intended — of which something will be said later. What is meant by social and economic independence, as applied to women, by its usual associations, tends however, in point of fact, to touch at last the family relation. That relation has been considered in times past to lie at the foundation of organized society. Modern government, that is to say the State, has been supposed to rest upon the family relation, the household. This struggle of woman for moral and economic independence has inevitably some bearing upon family ties, varying with the personal habits of mind and association of the indi-

vidual, all the way from mere freedom of action in securing a livelihood to looking complacently upon divorce, one of the most serious dangers of the modern State; to which the great breakwater of the Catholic Church with the Protestant Churches at last 'finding' themselves, opposes the only resolute check. To divorce as a disintegrating force attention must now be given.

It will be said that the family and the State have lived under divorce laws looser than any which now exist; and Rome, in her best estate, is pointed to as the outstanding illustration. The supposed illustration is a challenge which must be met. For that purpose it is important to understand clearly (1) what led to the overthrow of the Aryan family as Cicero and those who lived before him in the Republic knew it and as earlier and later members of the Aryan race have known it, and (2) what followed the overthrow.

The Republic was built upon the Aryan

family ; the Empire was built upon its ruins. No moral cataclysm however took place ; the practice of divorce did not put an end to the older household. The freedom of divorce in the Republic was not abused to the extent of working disintegration ; such a result was effectually prevented by the family system itself, which was practically, and in earlier times actually, a form of sovereignty of the most real character. That is the significant fact ; so long as that remained true, that is to say, until the Empire put an end to it, it prevented divorce at its worst — at its worst this was less a political evil under the Republic than under the Empire — from working disintegration in the State. The Aryan household endured because it was, and so long as it continued to be, a sovereignty.

The Aryan household has been a familiar institution since the middle of the last century, and what has just been said of the actual ground of its stability has been

pointed out by competent writers. A few observations may be quoted or adapted from one of these writers, to establish and at the same time make clear the remarks just made in regard to the relation of divorce to the Aryan State.¹⁰ 'One of the chief difficulties in the study of history,' says Hearne, 'is the tendency to judge men and early institutions by the standard and the lights of our own day. This tendency is indefinitely strengthened if we use the same name for both the ancient and the modern institution. There is, for example, little hope that we shall understand the nature of the archaic family if we permit ourselves to call it by that name. It is not only that the word family, or *Familia*, is hopelessly ambiguous, but also that the archaic household is essentially different from the family as we understand the term. Beyond the external resemblances that exist from the very nature of the case, that household had little likeness to anything that is found in mod-

ern society. It rested upon a theory abhorrent to our beliefs. It aimed at an object which we can with difficulty comprehend. . . . The theory upon which it rested was the paramount and continuous obligation of ancestral worship. . . . The machinery by which' this worship, the sacra, was maintained, 'was the corporate character of the household, and the perpetual succession of the House Father.'

In modern times, the same writer goes on to remind the reader, the word family does not denote any corporate idea, but merely certain relations between individuals; which relations, excepting marriage, are transient. The parental relation, in ordinary cases, lasts only till the children reach majority, meantime being itself subject to the control of the Sovereign, whenever such interference appears to be for the benefit of the children. 'The relation of the master to his servants rests entirely upon contract; his relation to his guests or

other inmates has the same foundation,' that is, of consent. 'Marriage alone retains the character of a status. Even as regards succession, it is only in the absence of any disposition to the contrary that parents and children have towards each other any legal rights. Collateral relatives, although they have in their degree similar rights of succession, are not now regarded as belonging to the family at all. We may then say that the modern family has no separate legal existence, but is merely a collective name for certain definite individuals, is limited in its duration, has [of itself] no present property but only expectations which may be defeated by the caprice of its master, and extends to lineal descendants only.'

'From such a family the archaic household' — the Roman family for instance of Cicero's time — 'was in every respect different. It formed an organized permanent body, distinct from its individual members, owning property, and having other rights

and duties of its own. In it all its members, whatever might be their position, had interests according to their rank. Over it the House Father presided with absolute power,' including that of life and death, 'not as owner in his own right, but as the officer and representative of the corporation. With his discretion no external authority was competent to interfere. . . . The tie between the members was neither blood nor contract, but community of domestic worship. Contract indeed between members of the same household was impossible. Even when an artificial group was formed,' as when a household became so large that it was found desirable to divide it, 'the contract in which it commenced immediately merged, as in the case of a modern marriage, in the status to which it gave rise. The termination of the household was not only not expected, but was regarded as both a public and private calamity. Further, the household, if no separation had taken place,

extended not only to lineal but to collateral relatives. It included servants and dependents. . . . Its one great aim was the perpetuation of the sacra. The sacra were essential both to the unity and the continuity of the household. If they ceased, the household was gone. The existence of a household without sacra was inconceivable. Each term connoted the other. But the sacra could be performed only in a particular way. It was a worship of males by males, of past Fathers by present Fathers. After his death not less than during his life, the Pater represented in the spirit-world all those who on earth had been under his hand, and required that the offerings due to him should be made by his successors and representatives alone. . . . The House Father never died,' except as one departed to the spirit-world; his heir kept up the perpetual succession or corporation.

Such was the family in the time of the Republic, of which touching glimpses are

so often caught in Cicero's letters.¹¹ That family was an imperium in imperio, a sovereignty within the Republic. It is plain that divorce, easily had as it was, could not affect the stability of such a family; the family continued as long as the sacra were maintained. Divorce could not affect the household because the household was not founded upon marriage. What brought the Aryan household to an end and put in its place the modern family was the Empire. The fully developed idea of sovereignty in the State was incompatible with the family as it had been; the House Father and the Caesars could not live together. The process of enforced disintegration of the Aryan family is described by the same writer who described the family. 'No State is likely to permit to any person the uncontrolled power of life and death over its subjects,' which the House Father had. 'The British government never even listened to the claims of the natives' of India 'to exercise their

paternal power. In early times the assertion of the supremacy of the State, even within the sacred precinct, was necessarily gradual and slow. It was in Rome that the paternal power longest survived; and it was in Rome that the authority of the State was most rigorous and complete.'

The connection between marriage and the State now begins to appear. In later Roman history the wife was seldom brought by marriage within the husband's manus, as a member of the corporate family. 'The old religious marriage had fallen into disuse,' mainly from considerations relating to the wife's property. 'Under the method which took its place means were found to prevent the usual power from attaching to the spouses. The wife remained in the household of her birth;' she was not transferred, as she had been by the old marriage, into the jurisdiction and power of her husband. 'In these circumstances the remedy for any domestic misconduct was divorce, a

remedy which was obtained as easily as the marriage itself was affected. The marriage tie was indeed looser at Rome, towards the fall of the Republic, than it has been in almost any other Aryan community. It was against this merely nominal marriage . . . that a violent reaction set in under Christianity.' This greatly changed the old household. 'One of its principal members was gone. The uxor of late days . . . could never, in a religious aspect, have filled the place of the mater familias.' The war made, by State and Christianity combined, against the Lares of the Aryan family was now afoot, to last until the household gods of Rome withdrew to distant seats, to mourn their fate.

'The Lars and Lemurs mourn with midnight plaint.'¹²

'In the East the Lar to this day obstinately maintains his ground. In the West he has been remorselessly hunted down. . . . But this worship was the foundation of archaic

society; and where the old beliefs were thus destroyed, the social superstructure could no longer stand.' Divorce was consistent with the Aryan household, but that household was not consistent with the sovereignty of the imperial Roman State. Much as Christianity hated divorce, still more did the State refuse to tolerate the Aryan household.

State and Church were accordingly at one in this warfare. Roman law, under the Empire, caused the archaic family to disintegrate. Christianity now 'supplied a pressing want. The State had taken the place of the clan,' or collection of households. 'But in the State there was no place for women or for children or for slaves. From these classes the protection of the Lar was practically withdrawn, and the protection of the State was not yet granted to them. It was natural therefore that they should welcome a religion which gave to them not only protection, but a social position and consideration much beyond any-

thing to which they could otherwise aspire.'

More and more the Church took advantage of the situation. 'Churchmen were the confidential advisers of the kings and of the barbarians, because their class had . . . a monopoly of culture. But these ecclesiastics were trained in the Roman law, and their administration, under this influence, tended both to strengthen royalty and to disintegrate the clans.' As for the obstructions which the Church encountered, 'the imperial jurisprudence . . . contained principles which exactly met their difficulties. Accordingly in dealing with those among whom the archaic customs prevailed, the legal ecclesiastics gave to some of the later principles of Roman law a powerful impulse. Under their hands the contract, the trust, the will, and consequently separate ownership, were gradually introduced. . . . With their assistance the whole gentile system of property, and all that depended upon that

system, were sooner or later doomed to fall.'

And so the State was built upon the ruins of the Aryan family, not because of the facility and practice of divorce, but because, being a sovereignty, the Aryan family was inconsistent with the sovereignty of the developed State. 'The empire furnished the law, and the Church furnished the lawyers, by which and by whom the customs of the barbarians were insensibly changed; and both the Empire and the Church presented that high organization, and that spectacle of centralized activity, which made so deep an impression upon the barbarian mind. . . . It was imperial law and imperial tradition, and not those of the Republic, that shaped the history of modern Europe.'

The family accordingly, as known to modern Europe and America, was and still is in intent founded upon marriage, and that as a tie for life, and it cannot endure

if marriage is considered a matter of temporary convenience or pleasure. Family disintegration played its full part in the fall of Rome, after the autocratic House Father had ceased to trouble. If indeed the State as it exists in this country is not founded upon the family, it is certainly supported in great measure by parental authority weakened though that is, and if the support is withdrawn, or weakened much beyond the present condition of things, the difficulty and the cost of maintaining the State, already serious enough, will be vastly increased. The parental authority, though limited and always subject to that of the State, is or may be a most potent factor in the peace and welfare of the community. The actual restraint which the parent is authorized to exercise, when in point of fact it is exercised, is of incalculable help to the stability of the State. The value of such help may be seen by observing the effect in those places in which the parental authority

is wanting or is relaxed. Rowdyism is the least of the forms of mischief which society suffers in such cases, and the State is often powerless to put an end to the trouble.

Besides this power of parental restraint, there is the constant and powerful influence of a wholesome home, which children should have, upon manners and morals and the welfare of society. It is not indeed too much to say that the family, as it has existed in modern times, and as it should exist to-day, has been the corner stone of the State. If the family is to disintegrate, the State is likely to fall, for there is nothing to take its place. At the very least, there must be enormous difficulty in maintaining organized society with disorganization of the family going on.

Not to dwell upon the general weakening in recent times of parental authority, and turning to divorce, what is the situation — what are the facts?

The United States Census Office has re-

cently published the divorce statistics for the twenty years from 1887 to 1906, and also those of the twenty years just preceding. The total number of divorces granted in the United States from 1887 to 1906 was 926,309. This number was distributed as follows: In the North Atlantic Division of States (the New England States, New York, New Jersey, Pennsylvania), 139,336. In the South Atlantic (Delaware, Maryland, District of Columbia, Virginia, West Virginia, No. Carolina, So. Carolina, Georgia, Florida), 56,544. In the North Central (Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, No. Dakota, So. Dakota, Nebraska, Kansas), 427,338. In the South Central (Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Arkansas, Indian Ter., Oklahoma, Texas), 213,304. In the Western (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, California), 88,787.

THE WEAKNESS OF THE STATE 49

In the year 1887, the total number for the whole country was 27,919. In 1891, it was 35,540; in 1896, 42,937; in 1901, 60,984; in 1906, 72,062. That is, in twenty years the number of divorces increased more than two hundred and sixty per cent.; while the increase of population was about twenty per cent. Upon an average one divorce is granted for about fifteen marriages; in some States, as in Michigan and Maine, the case is much worse, the proportion being one to eight or nine.

The returns by States are published, some of which may be given here. In Alabama in 1906 there were 2,162 divorces; in 1887 there were 596. In Arkansas in 1906 there were 2,428; in 1887, 827. In California in 1906 there were 1,813; in 1887, 785. In Colorado in 1906, there were 1,165; in 1887, 494. In Connecticut in 1906 there were 557; in 1887, 399. In Florida in 1906 there were 830; in 1887, 210. In Georgia in 1906 there were 862; in 1887,

229. In Illinois in 1906 there were 5,943; in 1887, 2,633. In Indiana in 1906 there were 4,048; in 1887, 2,080. In Kentucky in 1906 there were 2,050; in 1887, 949. In Louisiana in 1906 there were 882; in 1887, 269. In Maine in 1906 there were 786; in 1887, 402. In Maryland in 1906 there were 696; in 1887, 166. In Massachusetts in 1906 there were 1,540; in 1887, 752. In Michigan in 1906 there were 3,259; in 1887, 1,488. In Minnesota in 1906 there were 1,066; in 1887, 464. In Missouri in 1906 there were 3,936; in 1887, 1,561. In Nebraska in 1906 there were 1,186; in 1887, 676. In New Hampshire in 1906 there were 473; in 1887, 326. In New Jersey in 1906 there were 530; in 1887, 226. In New York in 1906 there were 2,069; in 1887, 1,042. In Ohio in 1906 there were 4,781; in 1887, 2,003. In Oregon in 1906 there were 1,026; in 1887, 268. In Pennsylvania in 1906 there were 3,027; in 1887, 1,097. In Rhode

Island in 1906 there were 368; in 1887, 245. In Tennessee in 1906 there were 2,172; in 1887, 924. In Texas in 1906 there were 5,173; in 1887, 1,468. In Vermont in 1906 there were 301; in 1887, 173. In Virginia in 1906 there were 1,074; in 1887, 305. In West Virginia in 1906 there were 966; in 1887, 215. In Washington in 1906 there were 1,981; in 1887, 160. In Wisconsin in 1906 there were 1,458; in 1887, 765. In Wyoming in 1906 there were 143; in 1887, 45.

In every instance the increase of divorces is greater relatively than the increase of population; in many cases vastly greater. Causes for divorces vary much in different parts of the Union. A recent publication enumerates eighteen causes for the whole country, nearly all of which exist in particular States; some of them very slight. In some States the court may (or formerly might) decree divorce wherever 'it shall consider it reasonable and proper.'

In the United States there were in 1906 about eighty divorces to every one hundred thousand of the population — in some of the States the ratio is more than double the general average; while in England and Wales it is stated that there are but two to that number. It would not be safe however to infer that the tendencies towards disintegration from this source were forty times greater here than in England, without considering other influences; but with all allowances the facts are sufficiently sobering. If the course of things continues long at the present rate, the stability of the family will be undermined, and with that, in the gathering dangers and increase of the cost of administration, the stability of the State. There is a limit to the cost of administration, and the difficulties of government. This is true even with great commercial prosperity and capacity for increase of wealth before unknown; the difficulties of government continue to increase, and the

cost falls largely upon those least able to bear it. The States should look into the subject before things have gone too far. All that prevents present disaster is the power of the courts to give direction for the care and education of those, where there are minor children, upon whom the evil falls most heavily, either by giving the children to the innocent party to the divorce, in which case some portion of the family is saved, or by making other disposition for their welfare during minority. But allowing for every mitigating fact, the evil is sufficient to call for much greater attention than has yet been given to it. The progress of decay of the family will require more and more policing of the cities, where the evil is the greatest and where the poor have to live so much upon the street. If the waste in the requirements of government, which will follow in the track of family disintegration, is to be prevented or reduced to the minimum, it is

plain that men of great ability must in some way be provided for the occasion. And when this is added to the other difficulties of the State, the question may well be raised, how is the country to rear men sufficient unto these things?

Divorce works family disintegration within the very terms of the law; and in its company train intemperance and a hundred forms of vice. Children are thrown upon the street, to grow up in enmity to the State and to require public vigilance to maintain order among them; in which the State but poorly succeeds. The help of 'settlements' for improving the slums which these evils foster in all the cities must be added, with the general result that energies are spent where they should be saved for other purposes, while the evil is only checked at best. All this falls much upon eye and ear and purse; still the facts are realized among the better classes, in their full extent, only by the few who are brought into

actual contact with them. 'How little,' says a leading journal of New York, good men 'see of the real conditions in the cities in which they live. They read what the papers say, but seldom visit the slums, the police court or the city prison. The conditions of a large part of the people in our cities are a sad commentary on our modern civilization. Jacob Riis has written a book entitled *How the Other Half Lives*, in which he has pointed out, as far as decency will allow, some of the conditions ; but no pen can describe . . . the wretchedness, the poverty, the vice . . . that lurk under the shadows of all American cities. Many years ago we used to hear that certain streets in the big cities were not safe after night-fall ; but we are beginning to feel that no street is safe after night or in the day time. Have not burglaries, holdups, robberies and unmentionable outrages been perpetrated recently in the best streets of the cities in broad daylight, and all this in

spite of an exceedingly expensive police force and city government ?' ¹³

A distinguished American who has spent much of his life in Europe is reported to have said that the worst governed city in Europe is better governed than the best governed city in America,¹⁴ a statement which could not have been far from the truth ten years ago. Such is the effect of disintegrating tendencies in family life in this country ; tendencies found all the way from the mansion to the meanest tenement house. Here it may be remarked are to be found the most sinister indications of a subject much considered in the next chapter, the dissipation of human energy.

The shortcomings of the law, in the administration of justice, have been a matter of such frequent comment that those who may have had no experience of them are informed more or less of the facts. But it will be useful to direct attention to the sub-

ject in these pages, for possibly new light may appear from the particular point of view here taken. Deferring remarks upon the Federal Constitution to another connection, the following observations may be made:—

In former times the English criminal law—and it is mainly but not entirely with the criminal law that the trouble lies—was made a subject of reproach because it practically discriminated against the humbler classes of society, who had no hand in making the law; discriminating against them not merely in the sense that the offences denounced most heavily were more common among them than among those in better circumstances, but also and particularly in that the penalties of the law were in such cases far too heavy. Something seriously wrong prevailed on the footing of even-handed justice, when larceny of petty things—things for instance of a shilling's value—were denounced by law

as felonies and punishable as if they had been crimes of the gravest nature. Inequality in the estimate put upon offences is as bad as inequality in the estimate put upon the offender. Here, in effect, was inequality in both respects; the humble man being subject to a punishment which would never have been prescribed had there been no such man, and the punishment being suited only to offences which really endangered the State. That was mainly English law.

That phase of the criminal law has given place to another, which, while in a measure doing away with the inequality spoken of, has brought in another form of the same mischief. The old penalties have been reformed out of the law — law inherited in milder form in this country — in the reaction which always was manifesting itself in one way or another, against its severity. But in the course of events, rapid in recent time beyond all precedent, the conditions of

life have greatly changed. The energies of science and discovery have been directed by, and so have brought forward classes of men, especially in commercial life, unknown in degree, if in kind, to the former civilization, and it has become necessary to shape the law to meet the new conditions. With what result? That is, with what result as produced by the former state of things? The old dispensation looked upon men in the higher walks of life as guides and leaders; their offences were looked upon as different from those of common men, as things to be endured, as perhaps unavoidable in high station, if they were deemed offences at all. Moral perception had become distorted; proportion was lost — lost in the opposite direction to that of the estimate of offences by humbler men; and now, in the rise in life of other men, when it had become necessary for them to see to it that the criminal law should be extended to the protection of their own members,

virtue had gone out of them, and the new seed of legislation produced its own crop of feeble laws. Disproportion reappeared, and still appears; the inequality of the newer law, unlike that of privilege already discussed, being a matter in which the general public, affected by the same influences, so far from protesting and fighting against it, has looked upon it with acquiescence if not with satisfaction. Subservience, voluntary and long-continued, enfeebles energy for the day, if it comes, when the servient class, rising in the social scale, becomes dominant. The sins of the fathers are visited upon the children unto the twentieth century; opportunity is of no use—it cannot be improved as the occasion requires. Disintegration in the way of drying up the springs of energy has taken place. Appeal to a public thus affected—the public may be alive to some things while dead to others equally touching it—is likely to produce no response, or at best but a temporary one, a flash, a spasm,

such as Philadelphia had a few years ago in the election of a 'reform' Mayor, or such as San Francisco, more recently still, had over her own municipal scandals. There is no water to draw; the wells are dry. Juries do not like to convict men in high station. 'The serious difficulty,' the President of the United States is reported to have said, 'in prosecuting men or corporations for creating monopoly comes as a matter of fact, in criminal cases, not from the lack of convincing evidence, but from the reluctance of juries to send the individual offender to prison for what he has done.' Such is the lesson of subserviency to social and legal inequality.

The law books are full of illustrations of the feebleness of legal restraint over men in modern business affairs. The corporation, being par excellence the instrument of commercial and industrial business, affords most of the illustrations. This business corporation is a peculiar invention. It is a privi-

lege, State created, and hence something to be looked into ; not that privilege is necessarily bad—property, contract, rights of all kind are privileges ; but trouble lurks in the idea, and it should be looked into in particular cases. A corporation is in the nature of things an agency ; but being a personality created by the Legislature, it is just what the Legislature chooses to make it, and no more. If the Legislature choose to treat it as something less than an ordinary agency, as seen in the general relation of principal and agent or master and servant or the members of a partnership, the Legislature may do so ; and as a matter of fact it usually does stop short, creating only a limited form of agency and trust. It grants a charter of incorporation ; if it goes no further, no agency between the directors and the officers and servants of the company is created, nor any duty imposed upon the directors in trust of which negligence in oversight is by law considered a breach,

though matters of the gravest importance and danger may be committed to them.¹⁵ Such agency as arises at all is now created by the corporation itself; and the corporation takes care that the business is not carried too far and made inconvenient to obtain the desired directors. They must not be made liable for the conduct of the officers and servants of the corporation; they must not be made liable for their own negligence, where they themselves have not undertaken a duty, if the charter has not made them liable. The corporation must indeed have officers and servants to attend to its business, and in appointing these it creates an agency between itself and others and becomes liable for the acts and conduct of such persons; but that is as far as it usually cares to go. It does not wish to have its managers—directors in the language of corporations—anything more than bare trustees for the corporation, or general overseers not liable for their own negligence

except when they have voluntarily assumed, or have been particularly charged with and accepted, some special duty, as where one of them is appointed to and accepts the post of president, vice-president or treasurer of the company. This supposes of course that these managers are not in reality the corporation itself; in which case they might be liable as are managers of unincorporated companies.

All this makes it difficult to reach the responsible man 'higher up.' It is usually much more difficult in the case of a corporation to find the man at the top than in other cases; so many more ways are there for him to cover up his tracks. There are in the great corporations many ranks between the man who is the immediate instrument of wrongdoing and the man who makes the temptation sufficient, each rank more secluded than the one before. The recent disclosures of fraud committed by the Sugar Trust furnish a case in point. The scape-

goats were easily discovered and convicted. But 'their employers, who hired them to commit the crime, who bribed their consciences and paid them a premium above their ordinary wages in recognition of their criminality,' how were they to be found? The most that can as yet be said is that the government is making progress 'along the trail,' as an editorial writer in a Boston newspaper well puts it. The government is on the search, examining footprints and records, and has it is said at last 'got in sight of men higher up than the tool' who worked the frauds. 'But there is a responsible personality in that corporation, without whose knowledge and sanction, or even direct orders, these crimes would have been impossible.'¹⁶ How to reach this one at the top is the really difficult thing; that is to say, the chief difficulty is found in reaching the chief offender. He is secure, more or less, because of the inadequacy of the legal machinery to reach him; there is evidence

enough, but the laws of evidence are handicapped in one way or another—they do not act directly and with effect. ‘Publicity’ legislation—legislation intended to bring about disclosure of the business of public corporations—is improving matters; but that causes an outcry against invading private concerns ‘which ought not to be revealed to rivals or enemies,’ and at best it does not go far. Such legislation seldom if ever extends to the business methods of private corporations, that is to say, corporations in which the public has, or is supposed to have, no concern.

And if it is difficult to reach the man higher up where he is clearly responsible for the misconduct of a subordinate, what is to be said of the ordinary directorate of a corporation where no agency between the directors and those below them has in terms, either of the charter or of the action of the corporation, been created? There is no liability in such cases, however grave the

business, unless there has been participation, collusion or actual direction — neglect is not enough — though the contrary would usually be true in the absence of incorporation. That is a situation which the corporation will not change, and the law hesitates to change it, because indeed this is a peculiar business affair, with limited liability! The public looks with indulgence upon the ways of great men of business; the leaders have ordered things so, and so they are permitted to remain. The director of a corporation escapes liability, or rather does not incur liability, because the company is a corporation, the creature of its charter, and nothing more; or if that would still be true though there were no incorporation, the case is no better.

This is true even in regard to civil responsibility — responsibility in damages merely. Some years ago an attempt was made in England to hold the directors of a corporation in damages for losses caused

by false statements in prospectuses which had been put out, in the usual way, to deceive the public. The directors in fact had no knowledge that the statements were false, but they knew that they had gone out from the offices of the corporation, and they were guilty of negligence in not having learned that the statements in the prospectuses were false. The suit against them failed; the court of last resort, the House of Lords, virtually holding that while directors were liable if they were guilty of fraud, as in case of participation, collusion, knowledge of the facts or the like, they might neglect to look into the business which they were appointed to manage to any extent, where no duty had been imposed upon them by law or assumed by themselves not to be negligent.¹⁷ That decision resulted indeed in legislation partly mending matters, by imposing reasonable duties upon the directors of corporations;¹⁸ but the decision itself would stand in a large part of America

to-day. Legislatures are not energetic enough here to overcome the resistance of the corporations even for the purpose of enabling a defrauded buyer of stock to recover damages, to say nothing of providing a remedy through the criminal law. It is true that the distinction here stated between fraud and negligence is not confined to corporations; it appears generally, because of a peculiarity of the common law of deceit, the soundness of which however has often been questioned. But that the directorate of a corporation should not be liable for neglecting to inquire into the truth of fraudulent representations put forth, to the knowledge of the directorate, from the offices of the corporation, to prey upon the public, with its special facilities for carrying out the purpose, indicates a benumbing of the sense of duty. In England it is not quite so bad since the legislation mentioned.

This exemption of directors from liability for neglecting attention to the conduct of

those whose actions they are appointed to oversee is not the worst of the business. Even where they themselves are found guilty by law, the penalties are apt to be so light as to illustrate what has already been said about inequality under the law. Such offences are likely to be made nothing more than misdemeanors. In New York, as Mr. Alger has pointed out, the Penal Code prescribes as a maximum punishment for most offences of the kind a year's imprisonment, or a fine of \$500. The course usually pursued is as simple as it is nefarious — dividends are paid, not out of earnings, but out of the capital paid in, until the capital is exhausted. Then the victim awakens to the real situation. When he consults legal counsel for redress, he may be told that it is hardly worth while to spend more money in a cause which can have so small a result—the offence is only a misdemeanor. Mr. Alger's words are a solemn warning against the dom-

inance at Albany of the powers of Wall Street; but they fell upon dulled ears, which is the significant fact.

The offence of directors in publishing false statements, with knowledge that they are false, of the financial condition of the company of which they are directors, is similar. 'Whittaker Wright,' says Mr. Alger, 'sentenced to hard labor for issuing false balance sheets of the wrecked London and Globe Finance Corporation, was convicted in England under a statute substantially similar to this section of the Penal Code. He was sentenced to seven years penal servitude,' and committed suicide in consequence. He would have escaped suicide under New York law, in a fine of \$500 or a year's imprisonment, at the most.¹⁹

The recent Federal legislation in regard to pure foods is the latest illustration. 'In spite of the great activity of the Department of Agriculture,' says a Boston newspaper,

' the pure food laws enacted with so much difficulty four years ago are violated constantly and grievously. One reason for the manufacturer's indifference for the requirements is the strange leniency with which the courts have imposed fines and the difficulties with which the Department secures its convictions. In twenty-four successful prosecutions for misbranding and adulteration, recently reported, the fines imposed were ludicrously small, and cannot be classed as "punishment" by any interpretation. Scarcely one would offset the profit from the transaction it was figured on. A fine of \$1 was imposed on a New York city Greek who labelled "a low grade of Santos" as "genuine Mocha coffee." A Cincinnati spice firm who shipped an artificial concoction as "Newton's very best Strawberry" was punished by a \$10 fine. The highest penalty of \$100 was given on a label of "Pure Olive Oil" where cottonseed oil figured in large quantities. In half the

cases the goods were released upon payment of the costs.' ²⁰

And so the play goes on; where punishment is adequate, the man high up expects with good reason to escape; where it is inadequate, he cares little what may happen. In either case the law fails of any serious result. The morning newspaper, noticing an instance, comments upon the immunity of the directors of corporations, and that is the end of the matter. Meantime a minor part, equally new, is being played at the other end of the social scale. It is well told in a Boston newspaper, under the heading of Safety of Petty Criminals. The article tells the whole story; it runs as follows:—

‘Admirable self-restraint is exercised by the criminal classes of eastern Europe who are now dumped on our shores, in view of the practical immunity from the danger of punishment which they enjoy. Unless they exhibit violence of so exceptionally serious

a character as to attract the attention of the community, and so through public sentiment compel the district attorney in the case to pursue it to a finish, they are wholly unlikely to see the inside of a jail.

‘As an illustration of how our criminal laws are working, a serious strike occurred not many miles from Boston in the early winter of 1909, in which Poles and Armenians went out of the factories and Greeks tried to take their places. Assaults were for several weeks almost continuous. Men caught by the police were brought into the local court, where the judge began to impose fines. Seeing that these had little effect, he gradually worked up to jail sentences of six months. Some of the assaults proved of a very serious character. But from all these jail sentences appeals were taken as fast as they were imposed, and, released on bail, the alleged assailants went forth the next day to renew their violence. The cases went to the Superior

Court at its next term, but it was so crowded that they were not reached. When they finally came up for trial, the counsel for the defendants told the district attorney that he should insist upon trying at length every single one of them unless the latter would agree to a settlement through the payment of modest fines. On these cases, involving as they did the hearing of witnesses through interpreters, much time could be consumed. The list was so long that the district attorney felt compelled to accept the compromise offered by the defence. The Armenians, Poles and Greeks therefore learned that they might club a man on the head in America without any resulting penalty worse than having to pay a very modest sum of money, and that after a considerable lapse of time.

‘Murders and other great cases in which public interest is aroused, the district attorney must . . . push to a trial. But to make way for them he is apparently obliged

to throw overboard . . . a very large proportion of the petty cases, or at least agree to settlements which represent no proper assertion of the authority of the law. People may accordingly wonder, when they read that a policeman, in trying to arrest a man, has been assaulted by the offender's associates, whether the latter will ever be punished. . . . If the charge of intent to kill can be brought against the offenders, the cases will go to the Superior Court, and they would be likely to undergo sentences perhaps for a long term of years. But if their action constitutes merely an assault . . . it would go to the lower courts. Persons there found guilty usually escape without any punishment worthy of the name. . . . By the time their cases are reached, after all possible delays within the power of the attorney for the defence . . . he is usually able to force a compromise with the district attorney.

‘Cases of all sorts are settled in Massa-

chusetts, because the district attorney has so little time. The counsel for the defence simply threatens to congest the court unless this is done. The whole situation is . . . becoming dangerous. A former district attorney . . . remarked a few years ago that the criminal classes had no full realization of the extent to which they were immune from punishment. If they once understood the strength of their position, they would break out in greater violence than had ever before been known. May it not be possible that the present outbreaks represent the gradual perception by the east Europe immigrants of what the conditions are? . . . ' ²¹

False conceptions of fact appear again throughout the law, openly, in the significant and avowed name of fictions. A subject of importance—one out of a hundred—may be taken for illustration. The law, following the philosophy of the English

Utilitarians, who hold that outward conduct and not the state of the mind in which it issued should be the test of morals and of legal responsibility, declares that a man is to be taken to intend the natural consequences of his acts or omissions. This to a considerable extent is doctrine both of the criminal and of the civil side of the law. According to this doctrine, knowledge of the circumstances in which a dangerous act is done or omitted, resulting in harm, is equivalent to an intention to do the harm, so far as liability is concerned. More than that, the doctrine, as commonly stated, imputes to the accused, not merely intention when he knows the facts, but a knowledge of the circumstances, if he was at the time in a position where, as a man of common intelligence, prudence or care, he might have known them. This makes, it will be noticed, a double remove of the event from the state of mind; first, doing the act with knowledge of the circumstances makes in-

tention; secondly, doing it without such knowledge makes intention if the person might have had the knowledge.

The plain man knows that that doctrine is not true as a matter of fact, and anyone with but small knowledge of psychology knows that it contradicts science in that it gives a false value to facts.²² The result is that to punish a man upon that footing — upon the footing of an equation that knowledge equals intention, and that what one might know equals knowledge — is to punish a man for an offence which he is not shown to have committed, and may not have committed; psychologically — that is, in point of fact — a man does not do an act which was not in his mind consciously at the time, or which though in his mind at the time, he did not intend, that is, had not made the object of his choice. But this is not the place to pursue that subject. The only point to be made here is that law often has, in matters of the highest importance,

preconceived ideas of facts, which it enforces regardless of the question whether those ideas are true or false. In any age that could not make for respect; in a scientific age its only place is in a museum. Fictions in law are indeed sometimes made the means of relief from serious difficulties — ‘in fictione juris semper equitas’ is my Lord Coke’s proverb; but that a fiction should be needed by the law is a perilous thing.

Such is a bare indication at once of the inadequacy and of the difficulties of the substantive or real law itself in dealing with misconduct, and the effect. It is only a special phase of inequality — of false estimate of values of fact. On the other hand, there are difficulties quite as great arising from technicalities not touching the merits of cases. These, unlike the defects in the law itself are not inequalities; they are sincerely democratic — they are always for all men alike; but if the former are a mark

of modern weakness, the latter are a token of old renown — inveterate weakness affecting the energy of the State and hence requiring mention, though they need not much delay the discussion. It is common nowadays to justify the past in this respect, so far as the criminal law is concerned, by saying that obstructing the law on technical grounds was permitted as an offset to the severity of the punishments which it called for. Probably there is truth in the statement; humane judges must always have administered the law, and education in the subtleties of disputation would help them to go as far as they could with safety. Indeed the evidence indicates that this education was a great factor with judges and lawyers in all past time, and it has not yet ceased in the lands of the common law; it was peculiarly true of the legal profession in the earlier period. Lawyers and judges, even when not in fact ecclesiastics, were educated in all the dialectic of the schoolmen, of

whom such as William of Champeaux, and his still more famous pupil and antagonist Abelard, in the twelfth century, were lights and leaders.²³ The dialectic of those old masters was meat and drink for the lawyers of the middle age; and the example of it has never been lost, as is shown by the seriousness with which to-day technicalities are discussed in the courts — discussed and treated as if they were not misconceptions of fact.

But though humanity as well as education led to finessing in the courts of justice, the evil was largely to fall upon modern times. The lesson was well taught, and the practice, in accordance with the laws of psychology, continued as a mental habit after the occasion for it as a matter of humanity had passed away. At last however judges upon the bench are beginning to say that the law really is concerned as much with the punishment of the guilty as with the protection of the innocent. This is quite a modern view

of the subject, and serves to indicate how far the law falls short of saving the State from the hands of bad men. Judges now are saying that the courts should face about and use their power to the full extent.

This however is a hard saying for many of the guardians of the State, and with all the protest against it the old order everywhere continues. It is not indeed as successful with the judges as it used to be, in bringing about delays and acquittals; judges may nowadays overrule, without serious difficulty, objections which are without merit. But they still are unable to break away from inherited and acquired habit; they still allow counsel to take valuable time in the argument of such things; they will often call for 'authorities' about trifles, and must 'consider of the matter' overmuch. It is but lately that a case was carried to a court of last resort, in part upon an objection to an indictment for murder that 'the indictment did not specify that

the defendant was a human being.' The indictment had been sustained at the trial before the jury, the prisoner's guilt was clear, and yet the mockery was permitted of objection and argument of such a point through all the prolonged stages of the case from the beginning to the highest court.²⁴ Another illustration may be given. Not so long ago but that the case is still referred to as authority, a remarkable action for slander was tried in Massachusetts. It finally went to the Supreme Court upon an objection to evidence, received by the court of first instance, that the slanderous words were spoken to members of a certain corporation, whereas the plaintiff in his declaration had alleged that they were spoken before the corporation itself. And that objection was sustained by the Supreme Court and the morally guilty defendant discharged of liability for a false accusation of a very serious nature.²⁵ The defendant of himself could never have hit upon such a 'fine

point,' but his counsel knew the law; he knew the rule of evidence — which science would repudiate — that if a thing to be proved is specified in the declaration it is thereby singled out and identified, and nothing else will satisfy the case. To say that a man stole — 'detained' is the legal word — a bag containing six quarts of meal is not proved by showing that the bag contained seven quarts! There must be neither 'variance' nor shadow of turning in the proofs.

The layman who is interested enough to consider the matter cannot understand such things, and cannot much respect those who do. Such things would be inconceivable in the investigations of a board of science.

It is almost as idle for the lawyer to set about explaining to an awakened layman why cases in which the guilt of a defendant is clear are subject to retrials, even upon what to lawyers are more serious questions of law — questions which touch the merits

of the case, in point of law, resembling technicalities only in that they are not inequalities. 'Why,' says the layman, 'should men slip through the fingers of justice when they ought to feel its heavy hand?' No explanation can satisfy the layman of the failure of justice, however sound the declaration of the law, in a case such as lately wound its long way through the Federal courts. A desperado shot down a deputy marshal of the United States, in cold blood, without excuse. Tried and convicted of murder, he carried the case to the Supreme Court of the United States upon an error — the layman always puts that word in quotation — in the judge's charge to the jury, and the Supreme Court reversed the conviction and sent the case back for another trial. The second trial failed for another error, and then a third; the Supreme Court each time reversing a conviction of the prisoner for murder. Meantime a layman, another officer of the law, knowing the

whole story and telling it, hints plainly enough that lynch law would be an improvement upon common law ; it would be free from 'errors.'²⁷ The prosecution may have been according to law ; but in that case, he considers the law, or the administration of it, it matters not which, a failure. And he has support on that point, in the dissent of judges of the Supreme Court, over what they call a failure of justice.²⁸

It does not help matters much that at last the guilty man — speaking of cases in which the suit is just — may receive full sentence, or is adjudged, as the case may be, to pay damages. The consequences of the delay are serious and costly to the public as well as to all concerned but the defendant ; in civil cases the benefit of recovery of damages is often annulled entirely by the delay. 'We went to the Supreme Court of Maine three times,' said a distinguished lawyer to a friend, 'before my brother for the plaintiff learned how to try his case.'

‘What happened after he did finally learn how?’ said the friend. ‘Bankruptcy and no assets,’ was the significant reply.

The layman who is sufficiently aroused by such things is sure that there must be a better way of doing them, at least that the trial judge, not to say learned counsel, ought not to make such expensive mistakes so often; while the public at large is at most only confused for a day, forgetting it the next. Habit prevents the occurrence making a serious impression upon the public, as it makes of the business a mental disposition of approval in the case of the familiarized lawyer.

Rules of procedure for the courts there must be; method is as necessary there as it is in the workshops of science, not merely to avoid waste, but to keep the greater wheels of justice moving at all, in the rush and pressure of business in the marts of trade. But the purpose of method is to eliminate the immaterial, not to sacri-

fice the material ; and to give time to the consideration of technicalities, unnecessarily, to the detriment of the substance, is to turn method into madness. Technical rules for the trial of causes should simply remove waste and expedite the purposes of litigation. That was clearly seen in England by the distinguished men who in 1873 and 1875 had the energy and ability necessary for the great work committed to them, of reforming the procedure of the courts.²⁹ But though that remarkable piece of work had been anticipated by certain half-hearted legislation in this country, the example of a thorough going reform of legal procedure — a reform which at once put the demurrer and the whole pack of common law technicalities of pleading to flight, and stopped not until the venerable system itself of courts (which had withstood all change from the thirteenth century) was overturned — that example was lost upon this country. Such an exhibition of energy, so salutary, so

effective, has never been seen in matters judicial in America ; courts and procedure are still mainly where they were in the first half of the nineteenth century. Where are the men in this country like Lord Cairns and his fellows of reform ?

Besides these forces, political, family and legal, moving as they are towards the disintegration of society, there is the sensational newspaper, unrestrained by any effective law, pervading every square mile of the land, professing to furnish what the people wish to read, assuming to be American, and only too well making good its professions and assumptions. The only result possible is taking place under the eyes of all who have eyes to see ; the newspapers most sought for by the young, boys and girl alike, — by the student in school and college, by the artisan, by the common people generally — are the sensational press. In other words, the sensa-

tional press represents the greater part of the public; and it is helping to make Americans of a type none too well disposed to order and government. Such Americans will need to be reckoned with more and more; more and more will their education affect the energies of the State as the work goes on.

And on it goes, with increasing effect. If now and then some better one of the number is shocked into repentance, and endeavors to make amends, the forces of evil rend it, and it falls into the hands of the receiver — the best evidence that its unabashed competitors are right when they say that they are serving the people with what they want. Newspapers of the kind will whet the appetite of the restless class with flaming accounts and pictures of a prospective prize-fight for the ‘championship of the world,’ with the champions in full figure and fighting order. One newspaper, more disposed to reflect upon the

dangers of sensationalism than some others, will give up the whole of the upper part of its first page, from one side to the other, straight across, to announcing in boldest type 'The Big Fight: John L. Sullivan,' and then, with a suitable portrait, proceed in large letters to declare that 'John L. Sullivan, of Boston, the most famous of all boxers, and himself the world champion for many years, will send to the Moonstone daily reports on the training of Jeffries and Johnson. And he will send exclusively to the Moonstone a graphic story of the fight by rounds. Sullivan has had the confidence' — note the word — 'of the American people to a larger degree than any other professional athlete. . . . You cannot afford to miss his articles.' ³⁰ And the Moonstone did not permit any of its readers to miss them. Another newspaper, shortly after the fight, having to announce with the affair the death of the Chief Justice of the United States, printed the pic-

tures of the Chief Justice and of Johnson, who won the fight, facing each other in open competition. The reader could take his choice; but the newspaper well knew who would get the votes of the town.

Then comes the aftermath, foredoomed from the first — fighting and race riots in every large town, from San Francisco to New York, not to speak of what happened in smaller places and in the country districts; and then, worst of all, the moving picture which could not thrive without an audience and was sure of one. The baleful influence upon society began its work without delay. If the State should sometime find itself in distress for want of the support, or rather for the disloyalty, of those whose support it should be able to rely upon, the sensational newspaper, which declares that it will ‘furnish the war’ if its correspondents will furnish the pictures, will have its place in the tale of the tragedy. The fruit of it is monopoly, as much

as in the case of privilege or family disintegration — the 'man in the street' will have no one over him; he will go his own way. The editorial page indeed usually reveals a better side, often one altogether creditable, so that it is fair to believe that the motive may not agree with the effect; and one may accordingly speak in sadness more than in anger, as of mistake. Still no editorial can offset the news column and the pictures; these still are certain to help on the forces which would throw off the restraints of authority and so undermine the State.³¹

Leaving the relation of current methods of education to these disorganizing influences for consideration in a more suitable connection in the next chapter, it may be considered that the facts presented in the foregoing pages are sufficient for the purpose of the present inquiry.

Let the thoughtful, candid reader, who

will not be turned aside by any optimism which would blind him to the reality, now stop and consider the nature and meaning of these facts. He will not fail to see, on the one hand, that the State, which is charged with the duty of carrying out the Great Trust, is permitting itself to be pushed aside in its purpose by privilege, which means that privilege either has usurped sovereignty or has succeeded in escaping obligation to it. On the other hand, he will see that the State has actually become party to the forces which are making for disintegration, and thus is itself giving 'aid and comfort' to the enemies of order. The Trust requires a reasonable observance of the aim of equality; the facts point plainly to delinquency. And opening the subject to its depths, what is found to be the essence of the delinquency? It is giving to facts a force or value which does not belong to them, either by their intrinsic qualities or their relation to other

facts. A self-centred people has become accustomed to taking for truth superficial views in regard to public affairs. The troubles of the State arise from failing to take the pains — failing to do the hard work required — to think problems of public life through, by seeing facts and their relations as they really are. The Great Trust, which requires that the facts in regard to it shall be thought out and seen in their true character, is not taken seriously, or if at times seriously, not with understanding. The problem is not thought down to the stable foundation of things, where artificial inequalities, together with false values of fact, disappear, and difference, at least for the practical purposes of life, — the metaphysical dispute more than ‘half as old as time’ may be put aside — and difference fades into unity. The people equate the Trust with an imperfect and halting regulation of inequality. In theory and aim the American State is a

well-appointed Gothic arch ; in reality the supports of the arch are unequal, and the people ignore the danger or do not see it. Privilege, though requiring order, of course will not admit that the supports of the arch are insecure when privilege has a free hand, and so must help on the deception ; while disintegration, when not openly disloyal to order, moves in a mysterious way not calculated to attract attention.

And this failure to see public affairs in their true light, with the resulting false estimate of matters of fact, has by long continuance become deepened into a habit of disregard. The troubles of the State therefore are of the most serious kind. Habits are of brain structure ; whatever the actual physiology of the subject,³² habits have the effect of pathways cut into the substance of the brain, and so tend to direct the currents of mental energy. It is not possible to emphasize this fact too strongly ; nothing could indicate more clearly the difficulty of the prob-

lem in question. No appeal to a public while affected by such a habit can avail much; that is true in the nature of things, and yet the fact is generally overlooked. Men appeal to the public to change its course as if that course had not been fixed by habit—as if habit had no part in the matter. While the habit remains—until the habit is uprooted—there can be nothing more than a temporary and ineffective movement away from it; while it remains, there will inevitably be a return to the former state of things as soon as the immediate excitement has spent its force, for the tendency is still there to follow the old pathways. Until this fact is clearly understood there can be no solution of the problem. There is no trivial loss of power when the structure of the brain has been affected by habits of the kind, which have been formed and deepened by generation after generation of willing men.

That is the serious thing. It is plain

therefore that the question is one of men. Had there been, in the beginning of things in this country and afterwards, a body of men sufficiently trained to think out and apply sound doctrine touching the rights of the State over things in which the public has an interest; or rather (for there have been men capable of such thinking) had there not been a deflection of mental energy into other channels, in the eighteenth, and especially in the nineteenth, century of American life, such evils as the private appropriation of mines and water power and forests, and the exploiting of milk supplies and the misuse of highways would not have vexed the State as they have.³³ The State would not have needed to wait for an invitation to intervene and assert the rights of the public. And had there been worked out, as circumstances required, a law of inequality, disintegration would not have made the inroad upon authority which it has. But men for the purpose have been

wanting. Meantime the Problem of the Great Trust has become vastly more difficult than it was in former times, and is growing more and more difficult every day ; and in the presence of an acceleration of commercial and industrial energy far surpassing the movement of the State to control it, the public, rendered by habit insensible to the meaning of the fact, deludes itself with a False Equation.³⁴

CHAPTER II

THE REMEDY

THE fundamental question is, how to uproot the habit of a people and plant another in its place. Can the False Equation be set aside for another which shall truly express the aim of the State and give equilibrium to the insecure arch? The State is in a strait betwixt two difficulties. On the one hand is privilege in the form of monopoly, moving forward at a rate which exceeds the movement of the State to keep it under control; on the other are the disintegrating forces moving at a similar rate and tending more and more to weaken public authority. What is to be done to enable the State to control the hostile forces and make good the Great Trust it has assumed? Weakened by the forces of disintegration, has the State

strength enough in reserve to dominate the forces of privilege? Is the State equal to the requirement of formulating a Law of Inequality? The question is not, what that law should be — it is not by what measures privilege should be regulated and disintegration at the same time defeated; the question is of the possibility of changing habits of mind and providing men competent to formulate a reasonable and practicable law for governing conduct growing out of mental inequalities. It is a question of men, considered from the point of view of psychophysics, or mental energy and the brain. It is essentially a matter of economic thinking, in the sense of increasing energy and diminishing waste. Only as such result can be brought about can there be hope of solving the problem in question.

The order of inquiry must be this: (1) Is there energy enough within the State to provide the men needed for the purpose? (2) If there is, how is the energy to be

made available and waste eliminated? Each question with its corollaries.

The men best qualified to speak upon the question of energy, the physicists, affirm that energy, animate and inanimate alike, is slowing down; that dissipation, not conservation, not evolution, is the real course of things, and is universal. The greatest as well as the most sublime display of energy was in the beginning. 'In the beginning God created the heavens and the earth;' and then God 'rested.' The energy of the sun is not as great as it once was, or as it has since been; the energy of the human race has never since been equal to that of the anthropoid in bursting his fetters and becoming man, and it is still diminishing.³⁵

The physicists are perhaps right; their word, however sobering, must be taken — they are the experts, and it is not for others to deny. Indeed the layman sees much in life to confirm the physicists; these pages themselves seem to furnish evidence, specific

and in detail. Disintegrating tendencies appear throughout organized society; in many cases of the gravest nature — tendencies engendered by the law itself, in divorce legislation, in the weak punishments provided for serious modern offences, in the open resort to fictions, in an antiquated procedure for investigating the truth, in a general unsettling of authority throughout society — always in false conceptions of matters of fact.³⁶ All this seems to give support to the word of the physicists. And doubtless much more could be shown to the same effect. The conditions being declared universal, and progressive, the warning of the physicists is fundamental. The situation is to be considered as neither a temporary ‘curve’ — the curve lowers in the long run — nor as due to the peculiarities of a particular race. It is not of yesterday or to-day, but of to-morrow; it is not of America, but of all mankind. Evolution — the rise of man — may be accepted within areas of time

and space, and under suitable conditions and environments, but as a universal theory it must be put aside, along with its predecessor the conservation of energy, now a scuttled ship in full sail. The evidence must be taken to be sufficient; human energy, like other forms of it, is in permanent and general declension. So the physicists.

All this may indeed be accepted and yet furnish no ground for discouragement. How high and how long the 'curves,' how wide and extensive the areas of time and space, and what the limits of environment — this the physicists do not, and could not as men loyal to science, tell the world. These things all may be ample for human energy to play a great and sufficient part in the world; curves and areas have been sufficient in the past, since dissipation began, and may likely be now and hereafter. There is to-day in striking particulars a high curve and a world-wide area of

energy ; and man is playing his part. The evidence is as plain and ample as that which physicists know so well as the evidence of dissipation.

It is agreed by all — the evidence penetrates the darkest retreat of the race — that the outburst and continuous acceleration of commercial and industrial energy in these days have never, in kind, been equalled, in a time of peace, never at least since Anthro-poid stood up and opened the new great play of Mind ; and no physicist would profess to see the end. Every indication points to a measure of permanency — permanency measured perhaps only by powers of restraint. The curve is rising higher and higher, the area is growing wider and wider, to embrace the world ; with science the one sure if not infallible guide to direct and continue the course of things. Science is coming to her own, as art came in Greece and again in the renaissance, even under the law of the dissipation of energy. That

law indeed is unheeded by science in her movements; the evidence is plain. Twenty years ago experts in the construction of ocean ships were saying that the limit of power had nearly been reached; to-day ships twice as great as those of that recent time cross the ocean within five days, and vastly larger ones are promised. The limit is no longer spoken of. Electricity is overcoming the hills of the cities and making them desirable for business, and hence, in prospect, for buildings equal to those in places heretofore held as the exclusive marts of commerce; the elevated portions may yet become as valuable as the level. Electricity is likely soon to displace steam on the railways and cause the railways to enter upon unheard of triumphs of transportation.

The difficulties of yesterday, supposed to be hopeless, are forgotten in the answers of to-day. At the time of this writing, midsummer, 1910, Mr. Westinghouse, the dis-

tinguished inventor of the railway air-brake, is supposed to have read in London a paper, at a gathering of representatives of the American Association of Mechanical Engineers, in connection with a meeting of the British Institute of Mechanical Engineers. Before leaving for London, Mr. Westinghouse gave out some of his observations. 'Five years ago,' as his remarks are introduced by a well-known writer for a daily newspaper of Boston, 'our railway managers were confronted with what seemed to them to be an almost unanswerable question. The Legislature' of New York, 'had commanded that the approaches to the terminals in New York city should be electrified, and the use of the steam locomotive abandoned. But where was the electric apparatus that could do this work? And how vast were the electric problems necessary to be solved! . . . For a year or two some of the railway managers agreed with Mr. Harriman, who was inclined to the opinion that the eco-

nomic advantage in the general use of electricity had not been and probably could not be demonstrated. Then later it became the experience of some railway managers who employed electricity that while operating expenses, as compared with steam energy, might not be so greatly reduced as to justify the expenditure of millions in substituting electricity for steam, nevertheless the tendency was to create much larger traffic when trains were operated by electricity than by steam. In other words, there will be profitable gains, particularly in suburban or distance traffic.' The New York Central Railroad, upon the advice of its vice-president, accordingly made very expensive alterations on its line. And now Mr. Westinghouse says 'emphatically and without any modification or suggestion of contingencies, that it has at last been demonstrated that the limitations of the steam locomotive have been reached.' And 'he is thoroughly convinced . . . that the

increased capacity of a railway and its stations, the high economics of operation, and other great advantages . . . will with absolute certainty bring about the complete and thoroughly systematic electrification of the steam railways of the United States, and ultimately of the world. And apparently it is Mr. Westinghouse's opinion that this transformation is now so imminent that it is essential for railway managers to reach agreements similar to those which they have reached in other departments of railway operation, agreements respecting the mechanics, the physics and the whole science of railway equipment and operation.' And Mr. Westinghouse thinks that the necessary capital, though very great, can easily be obtained. 'The Pennsylvania Railroad has no difficulty in obtaining all the capital needed for the electrification of its gigantic system of approaches to and establishment in New York city.' This and similar cases of securing and using capital are 'proof that

the railway managers have at last agreed upon the standardization of electric apparatus;’ for it would not do ‘to have one kind of electrical apparatus upon one trunk line and another kind upon another.’³⁷

The matter is summed up in an important contribution by Mr. Carson on *The Future of the Telephone*; ‘The electrical age has not yet arrived, but it is at hand; and no one can tell how brilliant the result may be when the creative minds of a nation are focussed upon the subjugation of this mysterious force, which has more power and more delicacy than any other force that man has been able to harness.’³⁸ And what is to be said of radium, the cause of the earth’s heat, according to some scientists? ‘A car load of radium would have as much energy as all the millions of tons of coal mined in the United States in a year.’ It is said to be incombustible; it gives off energy intra-atomic. It is to be found ‘everywhere, in water, rock and soil; it is universally dis-

tributed.' Edison has a tiny bit of it which will give out sparks enough to illuminate the State of Rhode Island. 'There will be no manual labor in the factories of the future. The men in them will be merely superintendents, watching the machinery to see that it works right.' So Edison predicts.³⁹

These are some of the indications of the degree of energy which invention, science and skill are furnishing. Even if these stood alone, they would be sufficient justification for the suggestion that there is no cause for discouragement in the teachings of the dissipation of energy. It is perhaps true that human energy, taking the mass of humanity together, is running down; but the same is true of inanimate nature—the sun's energy and the rest, perhaps withal electrical energy and radium; and then the question comes to this, whether the loss of human energy is out of proportion to that of inanimate nature. If still

human energy is relatively as great as ever — if it is still equal to the requirements — nothing more is necessary. All that is needed at any time is that man, such as he is, shall be able to ‘harness’ nature, such as it is. If man is not losing control of nature’s energy, especially if he is gaining upon it, he can exist and flourish.

The interpretation then of the facts of science is plain; there is human energy enough for the greatest pursuits of business life, and if for these then for other things, if only a clear passage for it is made. The point after all is, not so much that ample energy remains — that needs not much demonstration — as that energy in one way may well be energy in another, as for instance in government. The particular course to which it may be necessary to direct it should not be material unless there is something peculiar in the particular course in which energy is now having or has heretofore had its greatest display.

This at present indeed takes the form most conspicuously of industrial and commercial enterprise ; but it takes other forms as well, if not so much before men's eyes. Invention, discovery, all the forms of scientific investigation so characteristic of the time, are equally expressions of energy at its best ; and so, it is conceived, is education when following right lines and method. May it not be equally possible that energy, to the full extent of all that man may need or wish, may follow lines of law and bring to bear the control necessary to keep in suitable restraint the ambition of monopoly — in other words, to maintain that form of equality which alone appears to be consistent with the spirit of modern progress ? If there is energy enough in man to control the forces of nature, that same energy should enable man to control his fellow-men. It needs only to be diverted to that purpose. Is there any reason to suppose that energy cannot be diverted from lines of pure self-

interest? Doubtless self-interest is usually the strongest of motives, and energy, if free, will proceed at the greatest acceleration accordingly; but that is not always true. The world is full of examples of energy of the highest kind in matters furthest removed from self-interest—Antigones, and Damiens, and Coxes⁴⁰ offering themselves up where that is likely to bring in return anything but reward, where indeed the idea of reward is impossible or scorned. And it is fair to suppose that there might be energy sufficient to carry on orderly government against monopolizing ambition, though no reward were promised or expected. But successful government usually brings the highest and most desirable of all possible rewards—the satisfaction of the desire for fame, not to speak of pecuniary benefits. Man can hardly write his name so high, hardly attain such fame, as in successfully managing the affairs of State. And the way lies open there for

as many as in any other high calling. There appears to be no reason why commercial and industrial energy should not be diverted into channels of government.

The advance in Federal and State legislation in the last few years, on lines of equality, is noticeable evidence of the possibility of drawing energy in America to public affairs. The rising interest among men in municipal government in the large cities is clear indication that energy may be turned in the direction of the State, if the way be not too much choked up, as it has been and still is in many cities. Energy is probably ready to enter when the channel is sufficiently opened. The government of London and of other great cities of Britain, such as Glasgow and Birmingham, testifies to the fact. The London County Council, composed of a hundred men, now or recently from Lord Roseberry to John Burns, is a most efficient piece of machinery, running constantly, and without scandal. And it is

no longer true in this country, as it may once have been, that city government at its best is worse than is to be found anywhere else among civilized nations.

The same energy is seen everywhere in political administration. Germany alone among the nations, says a well-informed writer, 'is treating the behemoth of civilization as a creature to be controlled and made to serve rather than destroy or impair humanity.' The writer goes on to say that in building her cities Germany calls in her experts, creating them if they do not exist. Germany has made a science of town-planning. 'A school has been recently opened in Berlin devoted to the subject.' German energy is shown particularly in her taking control of the land of towns and solving 'the problem of transportation, light, power, heat and water,' which is fundamental. It is a case of scientific administration.⁴¹ 'Germany is building her cities,' says a newspaper of Baltimore, 'as thought-

fully and methodically as she is building her battleships. The ancient walls which once inclosed German cities have been torn down, the boundaries have been immensely extended so as to afford ample room in which to plan new growth, and the new sections are being laid out not alone with regard to utility, but with regard to beauty. The German cities are paying for parks, boulevards, docks and piers from the sale of surplus lands acquired in excess of needs. The German city thinks and plans as an individual thinks and plans. There is art in everything. Every bit of water is jealously preserved and developed, whether it be an old moat, an inland lake, a little stream or a river front. . . . Bremen and Düsseldorf have parked the moats which surrounded the old portions of those cities, and they are the chief feature of those modernized cities.' ⁴² Düsseldorf in particular, a city of importance, has been transformed in recent years almost past

recognition. All this too, it must be noticed, has been the result, not of private enterprise, to which every considerable town may bear witness, but of public energy over private interests.

Legislation abroad has also its striking examples. Nothing in England has for generations equalled the energy of the Judicature Acts of 1873 and 1875, referred to on another page. These Acts overturned a structure which had existed for six centuries, and they built upon the ruins. But German legislation brings perhaps the highest modern testimony of political energy. The adoption a few years ago of the German Civil Code is everywhere considered a great feat of energy. An outburst of legal literature had preceded. The Code itself has been called by a competent judge 'the most carefully considered statement of a nation's law that the world has ever seen;' it was a case of 'ideal morphology;' there was in it 'a delicacy of touch and

a subtlety of historical perception' beyond comparison.⁴³

Rome, ancient and modern, affords one of the greatest examples of public energy overcoming private monopoly or privilege. The monopoly which Rome under the Empire had to contend with was not indeed the monopoly of the twentieth century, but it was intense and entrenched. The House Father, as has already been pointed out, fought a death-in-hand fight, but he was either overcome or driven into distant parts, where he kept court in a secluded and harmless sovereignty. But the contest with the House Father was the episode of an idle hour compared with other things of the Empire. Lanciani has written a striking portrayal of the destruction of privilege by the State, where privilege stood in the way. Sovereign energy was displayed over the capital itself, bringing to a common level the inequalities of men; the rich and powerful senator, with his vested interests,

falling before it equally with the meanest malefactor, like grass before the sickle. Historical monuments, temples and fanes, sacred and cherished, shared the same fate ; vast spaces were cleared regardless of what stood upon them — palaces, gardens, colonnades alike were pulled down. No power could stay the energy of the Empire.⁴⁴ Such was government in Rome at that time. But Rome of the present day offers its testimony. ‘The Italians,’ says an intelligent writer, ‘are now for the first time since the fall of the Roman Empire living a united national life, the creation of which by their fathers and grandfathers was one of the greatest achievements of ancient or modern times, and this new and glorious unity demands an expression, in art and literature, in buildings and public works.’⁴⁵ And the work is proceeding in Roman administration to-day as if by the energy of the Caesars. Whether called vandalism, as it is by its foes, mostly abroad, or improve-

ment of conditions of health, safety and convenience, as it is called by its friends, mostly at home, it is sufficient evidence that energy can follow lines of government, to every needed purpose.

But it is idle to pursue the inquiry; nothing is plainer than that man's greatest energy has been displayed in all time in controlling his fellows, upon whatever purpose bent; and if man has failed in the twentieth century, and in America, or has materially fallen short, in the exercise of energy over privilege or monopoly, there must be some reason for the fact other than that it is a matter of government — other than that it is a contest waged by the public against inequality. What is that reason? It will not do to say that in a republic greater freedom of action is to be allowed than under other forms of government; for that would be tantamount to saying that a republic must permit itself to be overturned, in the interest of freedom, if freedom de-

crees, that is to say, if privilege or monopoly is not to be kept under public control.

The question then, to put it again, is why does the attempt in America to direct energy into the channel of government, in support of legal equality — for public control of private monopoly — why does that attempt fail, or fall short of its full purpose? Why should the public succeed in Germany, in Italy, in France, while the public does not succeed in America? Why is monopoly in America so often, in such great areas, beyond the reach of the State? To this question there are, it is conceived, aside from the disintegrating tendencies, already considered, two answers, which fall together but must be considered separately.

The first answer is the Federal Constitution. The creation of that charter was perhaps the greatest expression of political energy in modern times — the greatest since Magna Charta, and in its originality far greater than that instrument. But it could

not do the impossible. Thirteen discordant, jealous colonies, now independent States, with a long history of inter-colonial jars behind them, some of them holding, and making others keenly feel, a position of great commercial superiority — these were not to be welded into equality by any declaration that ‘all men are created equal.’ The sordid advantages of one State will not be surrendered out of regard for the interests of another, even when all concerned are of the same blood and language and have successfully fought a common enemy. Nothing but the gravest danger in keeping apart will even bring them together. Rhode Island, clutching still when others had given way, New York, Pennsylvania, Virginia and South Carolina — these were not to let go their hold upon Connecticut, New Jersey and North Carolina — New Jersey for instance was a patient ‘bled at both stumps,’ on the one side by New York and on the other by Pennsylvania — they were

not to let go if they could help it. The wealthier slaveholding States of the South could not consent to equality, man for man, with the non-slaveholding States of the North; and assurance of the fact must needs go into the Constitution as a condition to federation. Property in slaves must be counted in the voting, while property in the North was not to be reckoned; and this inequality in favor of the South, by parity of reasoning, was to be accompanied and followed in the North by another, in the end equally difficult for the State to control, commercial and industrial privilege already considered. The Federal Convention of 1789 could not equalize the States; it would have been rent in twain at the outset had such an idea been proposed—it would have failed of securing the vote perhaps of a single State for the adoption of a Constitution which had attempted it. Inequality — by the name of compromise — was fixed in the compact. Equality (in

such sense as it was possible) was a goal, an aim of the distant future ; but it must be remembered that it was still an aim, a theory of the State.

Constitutional restrictions of various kinds against effective action by the State must also be added ; departments to check each other and so to check the State, were to be created which eventually were to be held by the courts, which assumed to have the last word, to be watertight.

This is not the place to discuss legal questions ; but the energy of the State lies at the bottom of the subject and there is need of some remarks. Whether the twentieth century is to be handicapped by restrictions laid down in former times, especially where conditions have changed, is a matter of consent of the present. Until the old limitations are put away, the twentieth century, that is to say, present sovereignty, is indeed to be deemed to consent. But that consent may at any time be withdrawn ; saving (as

far as possible), as the lawyers say, 'the rights of innocent purchasers for value,' that is, rights honestly acquired and paid for. No set of men can bind men of later times; if later men refuse, there is an end of the matter — it is only when they consent and so become as it were parties to the limitations put upon sovereignty that they are bound; and even then they are bound only to the method of making changes, for it is part of the very stipulation that the substance may be changed. Now whether the twentieth century is to be restricted by the eighteenth in regard to the mode of changing the Constitution is solely a question of consent, for the twentieth century to decide; if admitted sovereignty to-day wills to permit or make a change by the test of a popular vote, or in any other way, it may do so. The only question is whether it wills; which is simply a question of the forces of society in the State. The Sovereign, moved as he is by such forces, cannot

be bound against his will, or longer than he wills, whatever action may once have been taken; though as a matter of prudence, or it may be of good faith, consent will generally be given — that is, the old limitations will be retained — where there is no great pressure for withdrawing it. What however the Sovereign *may* do is simply a question of power.

This right of sovereignty to refuse longer to be bound by its own former declarations the reason for which, in the judgment of the Sovereign, has ceased, is the necessary result of the Sovereign's right to exist. Whenever former declarations stand in the way, as sometimes will be the case, of the existence or serious purposes of sovereignty, these declarations may be annulled. The government of the United States was framed to exist and to be supreme; and whatever declarations may have been made, for instance in favor of privilege, that government is entitled to repudiate them if deemed

necessary to maintain itself, and it will repudiate them if social forces demand and are strong enough to accomplish the purpose — social forces which, it should be noticed, may be opposed to carrying out the Great Trust. To rest the point upon a commonplace, self-preservation is the first of all rights, a right upon which all others depend, and to which, if need be, all other considerations must give way. Sovereignty thus annulled its constitutional declarations in favor of the South and deprived the South, and the whole country, of lives and property, in the struggle against secession, without ‘due process of law.’ It required war in that case, but that was only because resistance was such that it could not be overcome by ordinary means of coercion. The Sovereign’s repudiation of the past is usually capable of being carried out by peaceful measures. The establishment of the doctrine of the police power, the greatest display perhaps of judicial energy since the

Constitution was formed, is an example. It became necessary to the stability of the State to assert this power—a power not given by the Constitution itself, by which property (or if need be, life) might be taken without process of law in the ordinary sense. Under this power property has often been confiscated by peaceful means of coercion. All this is simply a question of the required amount of energy in the State, in other words, of men equal to the occasion.

Most constitutional difficulties raised by privilege grow out of the need of the interpretation of language. Many difficult questions were passed over by the framers of the Constitution in general terms, to be interpreted by the future according to its varying needs. Here the State should be considered to have free course, though a great amount of energy may in certain cases be required. It is sometimes said that when the courts have construed the language of the Constitution, or of some

statute, the construction adopted is to be read into the instrument whose language is in question. But that is misleading. It is true so far as it involves future dealings and the action of the inferior courts, while it stands; it is not true in any other sense. The courts of final authority may overrule former constructions entirely, as the Supreme Court of the United States did in the *Legal Tender Cases*; while of course no court could set aside the constitutional or statutory declaration as such. The famous decision of the Supreme Court of the United States in the *Dartmouth College* case was only a matter of construction of the language of the Federal Constitution; the result is not as if the framers of the Constitution had expressly declared what the court thought was meant. It would no doubt require great energy now to overrule the construction adopted. But the Supreme Court certainly could do it. To have done it soon would have been far more direct

than to lay down the doctrine of the police power as an offset of the decision. The usual course is to 'distinguish' away a troublesome decision, gradually narrowing its operation until (it may be) little or nothing is left of it.

The constitutional obstacles in the way of Federal Commissions, particularly of the Interstate Commerce Commission are striking illustrations of the same difficulty; one of the first questions being whether the statute is not a delegation of powers of legislation, which Congress is considered to have no right to make. Now there is no clear prohibition in the Constitution of such delegation; the Constitution goes no further in terms than to provide for three separate departments of State, the executive, the legislative and the judiciary. The Constitution does not declare that these departments shall be watertight; it has remained for the courts to do that. But their decisions upon the point are only interpretation;

and that may be changed at any time, without resort to the cumbersome process laid down for changing the Constitution itself. The watertight idea, besides, is a most troublesome thing and probably was not entertained by the framers of the Constitution.

Indeed it may happen that Congress will yet assert the right to exclude the courts from passing upon the constitutionality of its Acts. The Supreme Court, by a great burst of energy, has assumed to have the last word upon that question; but the Constitution contains no language giving that function to the judiciary. It is only 'opinion,' in a matter of doubt. The action of the Supreme Court has in fact been criticized as a great usurpation.⁴⁶ A counter display of energy by Congress may yet be made, declaring that there is no power higher than itself, and that an Act of Congress must be accepted as constitutional until Congress itself shall set it aside. Congress may yet repudiate entirely, as it

must and does for most purposes, the corporation theory of the Great Charter. There is no law to settle the case; it is only a matter of energy, in which thus far the stronger part has been played by the Supreme Court.

Other questions of constitutional interpretation touching privilege vex the courts and legislatures from time to time, such as the provision that citizens shall not be deprived of their rights without 'due process of law.' No prosecution for alleged contempt of court, for instance by a labor union, can be maintained, it is urged, in the face of that provision, except in the one way in which it is not likely to succeed, to wit, by jury trial. Injunction is not 'due process of law,' in ordinary cases of strikes and boycotts, according to the same view. And the State hesitates; it may adopt these views — it may be best that it should do so. That is not a subject for consideration here; the only question here is, whether the State

has men competent to act for it, or whether, practically confessing weakness, it is to yield to duress. If the State acts by competent men, nothing is to be said of mistake—the risk of mistake must be taken. But if the State acts under duress, or fear, or supineness—if it does not rise to the requirements—it is plain that life is going out of it, that it has not men of the energy required for the Great Trust.

These hindrances to the free course of public energy are repeated in every one of nearly half a hundred State Constitutions of the land, until the whole goes far to explain the difference between public action in this country and public action in Germany, France and other countries. But it is plain that this does not prove any *want* of energy; the obvious explanation is that energy is hindered—that the channel through which it should pass, through which, judging from other peoples, it should press forward to success, has been choked

up. Energy here must be set to clearing the channel, which is being done in a slow and wasteful way, when conceivably, as has already been intimated, it might have been and might now be more directly and effectively employed. 'Imagine the regenerated Pittsburg — all this furious energy hitherto devoted to material success turned to social betterment and decent government.' ⁴⁷

The second answer to the question why the attempt in America to direct energy into channels of government, and to control hostile social forces, fails or falls short, touches things fundamental; it relates to education — to the schools, to school, college and university. Everything in organized society depends, as has already been observed, upon the stability of the State, upon the cost and difficulties of government, upon control of social forces, upon friction and waste. Hence to provide men who shall be equal to the requirements of the

State is the first thing. It is the business of education to do that, no less than to provide for other demands of life; and taking the word in a broad sense, education always does these things, so far as they are done at all, for in the broad sense education is the improvement of the mind by experience. Experience is education, from the cradle to the grave. Richard, the gardener of St. Leger, in Baring-Gould's description of *An Old English Home*, was an educated man in that sense, though his whole life had been spent in gardens—as truly educated as was his master with his university degree. That is a proper use of the word education, and statesmen as well as gardeners have sometimes come to mastery of their craft in the same way, with little aid of the schools.

But that way is apt to be as wasteful as it is 'special' and incomplete; and schools have been provided to avoid the waste and help broaden and complete the work of

improvement, with the result that the word education has come to be understood commonly to refer to the work done by them. And rightly ; for it is fair to expect that the country should be able to provide the schools with teachers competent to point out the most effective way of progress and of avoiding waste, as far as possible — teachers competent to arouse and foster a desire for improvement, so as to put the pupil upon a better footing than he could have gained without such aid. This, it should seem, ought to meet the demands of the State, in the best possible way. How far have results justified expectation? Have the schools, taking them as a whole through the country, from the primary school to the university, been found to have done the work?

The question is not, have the schools helped those who have attended them? It is, have the schools succeeded, as far as could justly be expected of them, in the

chief purpose of their existence, the promotion of energy and the elimination of waste in carrying on the affairs of life? It may be said at once, and the point dismissed, that the schools everywhere and always have engendered and fostered a desire for improvement. The first Puritan inscription in favor of education and religion, on the entrance gate to Harvard, and the first Federal declaration of the kind, in the creation of the Northwest territory, inscribed in the great hall of the University of Michigan, have justified themselves in this respect. The schools have helped to make better men, more useful men, of those who have attended them; they have done much too for men who could have done much without their help. They have provided a taste, and often a thirst, for learning, and they have supplied in the books and other literature which have directly or indirectly come from them, the means of gratifying the taste, to the advantage of homes

without number and to the betterment of the land. But the question here for consideration is, have the schools met reasonable expectation in furnishing men needed for the State? In particular, have they provided a better equipment for men in the public service, at the same outlay, than could otherwise have been had? Are they doing it now?

This is an appeal to matter of fact, to the lives of presidents, ministers of State, representatives, public leaders generally. Is it to the schools that the country is indebted for the men who have guided the State? The school education of the greatest of them all was slight. Washington was a self-educated man, so was Franklin, so was Jackson, so was Lincoln. All these were men of the greatest energy and success. Hamilton, Jefferson, the Adamses, Marshall, Gouverneur Morris, Madison, Calhoun, Webster, Clay, Taney and others before the civil war, were college men; but the college,

probably did little more for such men than to furnish them stimulus, guidance and opportunity. It probably did help to develop their native energy. School and college no doubt helped them to a considerable extent; it brought to them teachers and books and association with the best men of the time. The colleges did this for all who attended them; they did more than this for many. The curriculum being limited mainly to the classics and mathematics, the student was led, if he succeeded, to concentrate his powers of thought, and thus to develop one of the strongest functions of the mind. That was the just pride of the old education; but the great men of the time needed only the opportunity and the stimulus, while the smaller men needed the very shaping of the brain itself. With the former, college merely furnished and increased the powers of the mind; with the latter, it fashioned as well as furnished the mind, that is to say, college fashioned the mind in ways of

concentration ; for the rest it but furnished the mind with materials and stimulated it to exercise. Hamilton, Jefferson and the rest brought their mental dispositions — they brought an organized brain — to college and had only to make the most of the advantage ; others had to work on lines further back, if they learned anything beyond the concentration of such powers as they possessed. Whether college, for those who, when they entered, had not in some measure of development an organized brain, could accomplish much more than to furnish the mind with more or less ‘learning,’ may be doubted.

The point of these remarks is that the college of former times did little towards creating dispositions of the mind, beyond engendering a love of knowledge and helping to form powers of concentration. For the rest, the student stood upon his own footing ; if he brought to college the higher qualities of mind, he went out into the

world calculated for public station, or for leadership in professional life or literature or art or teaching; if he went to college without those qualities, he was likely to take his place on graduation in the common ranks of more or less cultivated men. As for any conscious, systematic purpose of organizing the forces of the brain, that was left to the wandering phrenologist, with his wonderful charts and bumps. The 'mental philosophy' of the schools, such as it was, played little or no part in the theory or mission of education; it was only a required 'accomplishment' of senior students.

But a change has come to pass. The study of psychology and of its physiological basis or counterpart has made great progress within half a century. A law of mental habit was always known to exist, in the way of inherited or acquired dispositions of mind; but what those dispositions of mind were, further than that they were dispositions or tendencies, and in that way

habits, especially what was the basis of them — that was only matter of speculation. But experiment and study have created experts, and these now are able to speak with competent knowledge of important aspects of mental phenomena. This knowledge extends to interesting particulars. A well-known member of the medical staff of the Roosevelt Hospital, New York, speaking of the mental process of learning to read, says that ‘an actual modification of gray matter results in a portion of the visual area, so that it can do what no other gray matter anywhere else can do.’ And then, generalizing, he says that here ‘we come upon a most impressive fact, namely, that by constant repetition of a given stimulus,’ as in the process of learning to read, ‘we can effect a permanent anatomical change in our brain stuff, which will add a specific and remarkable cerebral function to that place, which it never had before.’ True, this cannot be

seen even with the microscope, 'but yet there it must be, or a blood clot could not destroy it.' All mental process goes on in the same way, to making changes in brain stuff, producing in the end, as the same writer says, 'a fixed, habitual way of working.'⁴⁸ So, in a work for students, which accordingly must be taken as accepted language of the experts, teachers in the Massachusetts Institute of Technology say, 'We are largely what we make ourselves by the training which our actions give to the nervous system.'⁴⁹ And summing up the whole matter most significantly the writer first quoted says: 'We can make our own brains, so far as special mental functions or aptitudes are concerned, if only we have wills strong enough to take the trouble.' And again: 'The gray layer of our brains is actually plastic and capable of being fashioned,' a word which the present writer has already ventured to use, in paragraphs just preceding. 'It need not be left with only the

slender equipment of functions which nature gives it at birth. Instead, it can be fashioned artificially, that is, by education, so that it may acquire very many new functions or capacities which never came by birth nor by inheritance, but which can be stamped upon it as so many physical alterations in its protoplasmic substance. All this is demonstrated beyond cavil by the textural brain changes which the acquired and not congenital function of speech depends upon.' ⁵⁰

This is what is meant by psychologists as well as physiologists, when in figurative language, which probably has a physical basis, they speak of creating 'brain paths' for the course of mental process, or when they speak of a 'set' of the brain cortex, when that becomes more or less permanent. 'An acquired habit, from the physiological point of view, is nothing but a new pathway . . . in the brain, by which certain incoming currents ever tend to escape.' ⁵¹ It

is mental tendency or disposition, established through the nervous system, in the brain.

It follows that the schools may hinder as well as help sound education. They are inevitably forming dispositions of mind — fashioning the plastic brain ; and it is easier to form bad dispositions than good ones. The best ones are particularly difficult, for they require the meeting and overcoming of obstacles, while the bad ones only follow lines of least resistance. The schools of former times probably did little positive harm in this way, for, as has been seen, they at least taught concentration — energetic attention — without dissipation of energy, throughout their work ; which is the very condition of all attainment and excellence. Their shortcomings were mostly negative ; they failed to do things which should have been done ; they continued to pre-empt the field with classical education when there should have been found a larger place than

was given for the things of modern life. But this did not result in creating mental habits of a positive kind in the currents of energy. If energy did not take courses other than those of the schools, it was not because the way was closed or clogged with positive impediments; it was because it had not been employed in other ways—it had not become a habit of energy in the schools to employ itself in ways, for instance, of modern science. Perhaps however it would be right to say that the mind had acquired a habit of neglect, which would indeed be a serious impediment at first, and for some-time, to any attempt to direct energy to the neglected fields of education. But that is the most that could be said against the old education itself, that is, when carried out to its best.

But about forty years ago a break with the rigid education of the past was made and the field of the schools enlarged for the new learning. The idea was an inspiration,

as the sweep and swiftness of its advance proved ; but unity by liberty, the idea animating it, was too high a note for general humanity, and the schools fell upon dissipation. Specialization was made the theme, and naturally enough. A multitude of new subjects pressed forward for recognition as soon as the gateways were burst open, one as urgent for attention as another, and the fact as usual led to a theory. That theory was that these individual things, which were now within the rightful jurisdiction of the schools, should be separately studied and by advanced students 'exhausted,' as individuals, one by one. There was to be no generalization as a primary process; generalization was heresy; the new facts could not get a hearing if that was the object, or a chief object, of study. The moment that generalization took place masses of fact were swept aside as of no consequence. History was a pronounced example; the writer of these lines was at

that time constantly warned against such a proceeding — against beginning and building upon anything assumed to be fundamental; a proceeding which he could with difficulty resist. The facts were endless and therefore generalization, unsafe until the last fact was made known, could not take place at all. So specialization — the study of particulars of themselves — was the order of the new education; the mind being constantly occupied with individual facts, as ends in themselves. Relations were not primarily to be subjects of inquiry — they could not be. To treat them as such would carry inference afield and be fatal to the idea that there must be no generalization; to study relations as the object of inquiry would lead to the forbidden process. ‘In zoölogy,’ says a well-known writer on the subject, ‘the matter of systematic classification is regarded as a trifle . . . in comparison with anatomy. . . . Classification, which is the bedrock foundation of all perfect zo-

ological knowledge, is treated 'in the schools 'as if it were a necessary evil.' A relation of things when observed is accordingly nothing but a fact; when it is seen that a magnet attracts iron filings, that is important only as a fact, not as leading to or suggesting a generalization, for that would abolish too many facts. 'Finger prints' might be specialized in the schools, as a branch of physiology, or physio-criminology; every hand being different from every other, the supply of facts would be ample, but however important it might be, in aid of identifying criminals, to classify the facts, as practical men are now doing, that probably would be passed by 'as a trifle compared with anatomy.' ⁵² Even in botany, where classification is obviously fundamental, emphasis is placed more upon analysis than upon synthesis. And so it is generally; and yet unity is clearly more fundamental in the universe than difference can be.

The facts and the facts only are to be the

subjects of 'research' and study; that is the legitimate process and must be taught to the young for guidance and insisted upon as the way of sound education. This of course was not, and is not, universal in the schools, but it is orthodoxy there—it is characteristic. Outside of the schools it need hardly be said that this doctrine was neither universally, nor among men of science even generally accepted; Darwin, and scientists, philologists and others unknown to fame, were always pursuing scientific methods, and while gathering facts from the four quarters of the globe and from the heavens above, were constantly reducing their facts to order, classifying them and generalizing from them. But the schools were not to do that; they were not to begin with a generalization; they were to gather and study the facts and then put them away, in order indeed, with other facts like them. So far study touched indeed upon lines of relation; but this was a mere incident—

a matter of convenience in a general store-house of things — a way of finding things — not the primary object of inquiry.

This is true as well of subjects which are the particular field of students of science as of ordinary ones. ‘When Professor Agassiz,’ says the writer on zoölogy above quoted, ‘first set up in America the research idea and turned every pupil of zoölogy into an original laboratory “investigator,” he little dreamed that he was creating a serious handicap for the practical teachers of zoölogy of the present day ; but that is precisely what he did. When Charles Darwin published *The Origin of Species*, and for the first time focussed public attention on the theory of the evolutionary development of all animal life, he little dreamed that he was furnishing the raw materials from which there would be set up at this time a fetish,’ instead of the real object, the animal world, which pupils wished and ought to know something about.⁵³

The same writer goes on to say that complaints have come to him, from serious students, of the difficulty they have had in obtaining an all-round knowledge of zoölogy. 'On this subject,' he says with great significance, 'I have talked with many students, and also many teachers, representing all kinds of schools from the high school to the university, and I have found conditions that so extensively prevail that they may well-nigh be called universal.' In most universities and high-grade colleges he finds that "research" is the bane of the professors' activity and . . . "investigation" is the slough of despond of the general student. The result is "specialization" on the part of the student, and the turning out of a graduate who is specially unfit for teaching. . . . What,' he asks, 'does a trained embryologist care about the habits of the burrowing rodents of the United States? . . . or the best way to breed foxes in captivity?' On such details students everywhere are kept

for weeks and months ; which is ‘enough to discourage any pupil and rob him of all desire to go on in zoölogy,’ when by pursuing right methods the interest of the student could be aroused and kept up as long as he lived. There was no school, college or university in the land, so far as he could by diligent inquiry ascertain, where a pupil could in regular course acquire a comprehensive knowledge of important branches of the subject. A ‘select few’ might by coaching ‘specialize’ in particular lines ; the mass of pupils could not — for them the instruction was a failure. ‘Millions need something that they are not getting.’⁵⁴

Meantime the fashioning of brain stuff has been going on with these ‘millions,’ as well as with the ‘select few ;’ and what has been the fashioning ? It has been creating dispositions for detached things—for unrelated things, for the number of things, constantly increasing, which could be acquired. Furnishing the mind, without regard to the

way of fashioning it, has been and is the idea. Pupils' brains are being laden with facts, odds and ends it may be of everything, more or less of it acquired by hard work at memorizing, and retained very likely because of the effort made or because of a good memory ; and all the worse for being retained, for the effect is only to disable or minimize the driving agency of the brain, preventing energy from having its proper course. And those who merely 'specialize,' how much better off are they? They are unfitted for teaching except in the same vicious way, and so helping still others into the 'slough of despond.' Classification, generalization, should not be taught, even if they were to catch some glimpse of the meaning of fundamental things ; to build upon foundations laid is not the modern way. The serious thing in all cases is that, with an ever increasing demand of subjects to be taught, mental energy is spent and benumbed in dissipation. The current idea, to repeat, is

that the object of education is simply to furnish the mind ; fashioning the brain has no meaning or but the vaguest. It is yet to be learned that fashioning the brain is more important than providing it with furniture, however useful the latter.

And where, among those educated in this way, are to be found the strong men, the men of energy, upon whom the State can rely ? The schools should produce the leaders, but do not produce them ; the few who come to leadership from the schools did not get their leadership there ; they had it in themselves, and that saved them in their work. Inherited dispositions kept them from falling into the ways of others ; they kept their heads in a very literal sense, and energy had free course. The number of men of strength and energy, outside of the lines discussed in the preceding pages, is fewer relatively and even actually than in former times ; and this with vastly greater numbers in attendance upon the

schools. Germany, France and other countries look to their schools for men of leadership and are not disappointed. The schools of such countries pursue methods which bear results for which the schools are intended. An Englishman, a member of Parliament, has just said that England has more to fear from the German schoolmaster than from the German navy. The leaders produced in America, and they are numerous enough, are found largely in self-made men in business life; 'captains of industry,' with some training it may be of the schools — often, as in the case of the elder Vanderbilt and his rivals, and Carnegie and Rockefeller, with little or none. But leaders in American life are found outside of business; they are found in the walks of science, literature and art, where the schools, so far as they have played a part at all, have at most but furnished an opportunity for showing evidence of energy in men pre-determined to leadership — how many American paint-

ers and sculptors were college-bred? Great leaders are found too occasionally in the Church — leaders who are more than preachers. The greatest ecclesiastical magistrate of America, Thomas Asbury, had besides what he gave himself but a common school education; but he left a record of energy and achievement comparable with that of the greatest statesmen. It would be useful to the student of education to compare Asbury's life and labors, and their results, with those of his able and accomplished associate Dr. Thomas Coke, a graduate of Oxford. The two form a striking picture of contrast and likeness; Coke (1747-1814), a man of delicate mould, a clergyman of the Church of England, a doctor of civil law in his own great university, a man of wealth, crossing and re-crossing the Atlantic time after time, when to cross the sea meant hardship and peril and sacrifice, projecting and carrying out great plans of missionary enterprise, and,

ardent soul that he was, giving up his restless body at last to the restless waves of the Indian sea; Asbury (1745-1816), a commanding figure, spiritual son of him 'whose genius for government was not inferior to that of Richelieu,' devoted equally with Francis of Assisi to poverty, an unwilling celibate, breaking his way through trackless forests, over unknown mountain ranges, pioneer and prophet of trade-routes impatient for the coming commerce, South, North, East and West, — everywhere in his saddlebags organizing his people into compact units and welding all into one coherent, vigorous organization comparable in efficiency to the orders of Rome, his labors 'among the most remarkable of which history bears record:' — these two men, elected at the same time to the same high office,⁵⁵ who joined their names in naming a college founded by them, which deserved to live,⁵⁶ whose lives should be the property of the English-speaking race the world over,

and not merely of the religious body which came of their labors, these two men of opposite educational advantages were alike men of supreme energy and success. Plainly energy is not born of the schools. Oxford no doubt did much for Coke, for education there was along right lines; the common schools did little for Asbury — what Oxford might have done it might not be wise for his followers to consider.

The schools in this country certainly have not met just expectation; and the reason is now plain. The State requires men who can deal with facts in their relation to other facts, men who *must* see facts, not as mere facts, but in their relationships, in their bearings, in their proper classification and adjustment — men who can generalize from the facts with which they have to deal; whereas the schools too generally turn out men whose minds are disabled for any such purpose, men who have acquired dispositions

tending in the opposite direction, towards distraction. The world needs men who, caring nothing for a fact as such, will set the greatest store by the possible connections of a fact, and if these are unknown will put forth every effort to discover the truth. For such men, for men who can and will generalize, the world offers its highest rewards; for the world knows that they will confer upon it its greatest benefits. Such men can make the Future.

It is true that there is danger in generalizing when all the facts entering into the result are not known and well in hand; but where the facts are infinite, as practically they are in the universe and indeed in many departments of it, or where there is urgency, the alternative of refusing or failing to generalize is still more dangerous. In such cases the man who will not or cannot generalize is not the man for leadership or for counsel. The danger of making mistakes should not be permitted to paralyze

action; with such safeguards as sound judgment may provide, the generalization must be made. And in the method of instruction, by way of example, and as far as may be, by actual precept, this should be taught in the schools of America as a vital part of education.

The criticism of these pages, it may be repeated, is not against the schools universally; there are schools and colleges here and there, and there are teachers beyond these, that have successfully resisted the general trend. There are colleges which take just pride in pursuing lines of unity in education; and they are known to turn out capable men, men who can administer large, complex interests, and direct specialists who, because they are specialists only, cannot see the relation of their particular work to other departments of it and to the whole. And this is what should be expected of all the schools; for the State has the

right to look to the schools of learning for its administrators. The schools of war do their work ; West Point and Annapolis have kept their course true throughout all the vagaries of recent education. The art of war could not suffer methods of distraction ; its teaching must essentially be of relations — of unity — though not more essentially for success than that of the ordinary schools. And how disconcerting that schools of peace should need to go to schools of war for a fundamental lesson in the art of education !

A chief result of current education, and for that matter of the older education as well, is that, following, or rather directed into, paths of least resistance, it makes the most of that least active and adventurous function of mind, the memory, often as every one knows developing prodigies of it. Memory is, as Sir George Reid, High Commissioner of Education in Australia, said on a late occasion, ‘ the great prize-taker at

school.' But it was 'really one of the humblest' of mental functions. 'It originated nothing; it combined nothing; it was the domestic drudge, useful only to fetch and carry what it was trusted with.'⁵⁷ And this, because of its readiness and facility, necessarily tends, the more it is made the chief object of school exercise, to defeat the stronger functions; these refuse paths of least resistance and call for hard work, which produce no immediate, obvious result. The weaker takes the place of the stronger by the same law by which a poorer currency will supplant a better if it has a clear field. Singling out memory as the function to be developed, it cannot be too much emphasized, is to fashion the brain against the development of the understanding, and to make the development of the latter not merely irksome but disagreeable and hateful to an unnecessary degree. And yet, as Sir George Reid well said, students would find, when they entered life, that 'success would depend

not upon the accuracy of their memories but upon the vigor of their understandings.' Memory has of course its place, and a great place, in the operations of the mind and in education, but that is not first place; it must not be made or permitted to defeat the functions which it is intended to serve—it must be servant not master of the mind.

The greatest evil however which the later education creates is its effect upon attention. No subject is more important than this; none has perhaps so much vexed inquiry in regard to the mind. The psychologists have exhausted ingenuity upon the subject. And well enough; for as was remarked in another place, attention is the very condition of all achievement. It could not be otherwise, for attention is holding, in the focus of conscious thinking, the object to which it is directed; it is the mind directed as an instrument upon the object. Now directing attention constantly to mere facts

and details, turning from one to another without consideration of the bonds which bind them in relationship, is distraction ; it inevitably involves weariness and waste.

Whatever the natural, inherent difficulties of attention, these are aggravated and others added to them by the course of the later education. Whether there is in fact, in the physiology of the brain, something which produces momentary fluctuation of attention — recent investigation tends to put in serious doubt the first, affirmative views of psychologists upon the subject — or whether there are only ‘ waves ’ of attention of varying length, according perhaps to the particular individual — and it is clear that there are such waves — the practice, becoming habit, of turning from one thing to another, without connecting them is agreed by all psychologists, as it must be by every other observing person, to be pernicious.

The evil prevails to an alarming extent in school and, in consequence, out of and

after school, in life. Attention to the tasks of the recitation room and to the affairs of life alike is seldom held through to the end of a serious matter which needs to be thought through and out; it flits hither and thither, in the lines of habit formed for it in the schools. Indeed in the kind of life which has come to pass this is actually required; the demand of society being for constant change and diversion. Münsterberg bluntly says that Americans suffer more than other people, 'and more now than at any other time, from weakness of attention;' which he says, as others have said, is due to a reaction from the period of classical education, a reaction which swept the country in 'a wave of electivism . . . meant to bring the blessings of freedom, but which did bring primarily a destruction of self-discipline.'⁵⁸ Another student, of the finest clay of which humanity is made, has put the case in a more picturesque but no less true setting. 'There

is no lack of energy,' says Wallace, 'but it is wasted upon interests transitory and deciduous. The power of the modern soul, swept by passions which the elder world knew not of, often foams into splendor; but it is a flash as wild and evanescent as the yellow gleam of the morning ray upon the dashing waves of the Adriatic. Instead of that intense concentration of power and purpose which brought all the light of being to one starlike focus, we behold, in the instincts of the modern character, a tendency to disperse and scatter the rays of the mind.'⁵⁹ This suggestion of mental astigmatism is the more noticeable, it may be remarked, in that it was thus in evidence under classical ideas of education, before the middle of the last century.

Münsterberg finds that this growing evil is enhanced by the general employment of women as teachers in the schools.⁶⁰ That is a delicate point, upon which the country is somewhat sensitive; but the fact cannot

be put aside that there is a difference between the operations of the brain of men and women. Men's pursuits are different from those of women, and that fact is and must be due to a different functioning of the mind in the sexes. Leaving exceptions on one side, and dealing only with characteristics, women seek and have change and diversion more than men do. That, it need hardly be said, is a matter of attention; with women attention instinctively passes quickly from one thing to another, in the play of things agreeable and disagreeable — in the play of light and shade, of form and color, of beauty and ugliness, of society and solitude, of smiles and tears, of friendship and jealousy, with broken chords of memory between — this is characteristic of women, more than of men. It becomes a question then deserving of consideration, free from all hysterics, whether it is wise to employ women so generally, at least so indiscriminately, in the

teaching of boys. It is not done so in other countries, and Americans suffer more than others from inability to control attention. Is there any connection between these facts?

All this of the question put many pages back, whether there is in America the energy required for the efficient government of the country in its present and prospective difficulties and complexities — difficulties and complexities increasing all the time at a constantly accelerating progress, greater, as an economic axiom puts it, *ceteris paribus*, than the increase of population. The evidence is that there is energy enough for the purpose; but it is at the same time clear that, like breath poured through a damaged flute, energy is obstructed in its course by imperfections of an ill-developed brain. Some of it passes the obstruction, for men do have to think some things through; much, if not

most of it — the richest and best of it — is wasted on the way. What then is to be done; how is the existing energy to be made available for the purpose, and so directed as to prevent unnecessary waste? That is the final question.

The foregoing pages indicate that, whatever else may be necessary, energy must, in the first place, have free course through the brain, if the country is to have men competent to the requirements of the Great Trust. It is a question of the fashioning of brain stuff. Education must, in the second place, see to it that this fashioning is such as to enable the brain to play its part without unnecessary waste; education which impedes or tends to impede the course of energy, or would let it run wild, is of course wrong. Education has indeed another function; it must furnish as well as fashion, furnishing the mind while fashioning the brain. But the furnishing is a means to the end, which is fashioning.

Free play and right direction of energy through the brain are an absolute requirement, a requirement upon which emphasis must always, but now more than ever, be laid.

To enable the brain to do the double work of giving free play to energy and preventing waste, it must be organized, organized so as to bring to the necessary focus the energy at hand. Organization is the one method — both condition and assurance — by which the brain is to be made equal to the purpose. That proposition as the hypothesis of educational induction, already foreshadowed more than once in these pages, is the *tour de force* of the subject and must be clearly established, established as the State has to prove an indictment for crime — beyond a reasonable doubt. What is meant by organizing the brain? And how is this to be done?

It will help the answer to consider cer-

tain marked examples of objective, external organization.

Where is to be found the most perfect and majestic embodiment of effective action, with the least amount of waste, with no more waste than the physicist law of dissipation requires? There once lived a Hebrew seer, held then and still held in repute, who found ordinary language inadequate to express his thought, when regarding the procession of the stars; at any rate his English translators found no ordinary word equal to the purpose, and so made use of one well calculated to leave the mind in an attitude of awe. ‘The heavens declare the *glory* of God.’ There is no language equal to their silent speech; it is the majesty of the heavens — the ‘music of the spheres,’ not the common music of sound, but the *μουσική* of perfectly adjusted harmony. That speaks organization at its highest; it is the perfection of movement and adjusted power; every part suited to every other; the rela-

tion of one to another even and equal to its purpose. The spheres make their awful orbits in space—they do their work—without a jar. That is unity, as expressed by Sovereignty.

Government works with energy and with less and less friction and waste as it approaches this model of perfect organization. Unfortunately, few if any governments of men have ever very nearly approached the model. There have been governments, from the empire of the Caesars to the empire of the Kaiser, which have shown energy at its best, so far as power to overcome particular obstacles is concerned; but that is because rulers have been able to act for the particular purpose with the unity necessary. For the time being there has been real organization; all parts of the State contributing to the special purpose, or being compelled to keep silent. So far administration is perfect; but the time has always come, sooner or later, for testing the machinery in other respects—

for its adaptability to meet different conditions, for meeting for instance its expenses after an exhaustive expression of energy in war. It is only when government is able to bear all the tests which may come to it that it can be said to approach perfection. This could be only when organization was perfect, in the sense that perfect relations existed between all the parts and with the rest of the world ; then only would friction and waste be eliminated. But as cases of power in particulars show, organization is the condition of success.

The difficulties of government in this country may be noticed in illustration. The troubles of the government of the United States make a large part of the present discussion. These are due to imperfect organization. There is theoretical unity in the whole scheme ; general coördination in the departments of State and adjustment of relations internal and external. But theory is badly worked out. As a matter of fact

the correlation of parts, and especially the external correlation, is not such as to make administration effective in avoiding waste; and on the other hand, it actually stifles energy. There are half a hundred jurisdictions, each not only independent of the others, which is certain to cause friction, but also in great measure independent of the general government; and the tendency is to create new ones on the same footing—an increasing tendency—with little to counteract except as some energetic administrator is able to assert himself. Not long ago the Federal government was embarrassed in a humiliating way by the action of the sovereign State of Louisiana in failing to protect Italians within her borders; and just now the government was in the same case by threatened action of the sovereign State of California in regard to Japanese laborers within her territory. The Constitution of the United States, as has already been observed, was a resultant of conflicting

forces, centralization and local government, slave labor and free labor, agriculture and commerce; private vested interests becoming dominant at the expense of unity. In time of war indeed practical unity may be effected—for that purpose organization may be assumed and made complete; but that is a single test only. No question is made here, it may be repeated, of policy; the only point is that as a matter of fact the Federal government is not organized on lines of complete unity and hence cannot do what unity would enable it to do. Wherever organization is imperfect, friction and waste follow, even if energy is not retarded.

An illustration of another kind may be given. The commercial situation of some of the cities is much before the public. Men of discernment are grappling for instance with the question, what is the matter with Boston. The matter with Boston, as these men see it, is as it was with Bremen and Düsseldorf, the chaotic or at best very de-

fective condition of communication around, in and through the city, the condition of the water front, and things of that kind. The whole situation is haphazard, without unity, full of waste, now demanding sums of money for bettering things which appall the most public-spirited men. It began without system, and the result was inevitable; confusion followed necessarily as growth took place without order upon a comprehensive plan — order that should regard all the parts of the growing complexity and bring them into supporting relation to each other. How to bring about such an adjustment and put an end to the enormous waste — how to undo false conceptions of fact — is the question which business men of Boston are considering as of ‘Boston in 1915.’ That question is for engineers and other experts; but this the non-expert is competent to say, that organization — correlation, order, unity — is the essential condition of carrying out the project to success.

Perfection as seen in the great model is approached in two things; in the method of investigating truth by science, and in the administration of great business corporations which follows that method. Each of these illustrates organization at its best in the affairs of men. Here are at once the greatest energy and the most complete elimination of waste, to be seen anywhere. Two principles govern the investigations of science. First, facts are weighed by their own merits, in a perfect democracy; there is no extrinsic authority or estimate by which the stamp of inequality can be put upon them. Differences of value there are; but external authority neither makes nor justifies the making of them—they are intrinsic. And therefore when science finds the existence of facts which stand not upon their own merits but upon mere external authority, science repudiates the means by which this comes about; it recognizes the existence of the fact only to protest and if

possible correct it. Science would correct the False Equation — the false estimate of values of fact in the State — by calling the State back to its own true equation, equality as far as that is practicable in government. Secondly, and as a corollary to the first principle, science regards facts not as mere facts — it has no use for them as mere facts — it regards them only in their relation to other facts. This, for the present purpose — for considering how energy may best be made available — this matter of relations is now the crux of the subject under consideration.

The relationship of things consists in a bond common to each; which thus furnishes the principle upon which they are united. This may be traced from above, to broaden with the descent until the fundamental bond of the whole system is reached; or it may be traced from the bottom, at the foundation, to narrow as it ascends. When the fundamental fact remains to be discovered, the

process is called induction or the Baconian method — it is from the known or the particular to the unknown or general ; when the fundamental fact is known, the proceeding is called deduction — it is simply from the general to the particular. In this sort of case it is usual, in acquiring knowledge and mastery of a subject, to begin with the fundamental generalization and proceed to the divisions and subdivisions ; that is to say, it is usual to build upon the broadest generalization, if that has been discovered ; and with each subsequent division, to build upon its fundamental idea. ‘ The German begins at the bottom and builds up.’ This, it is conceived, is the true way of mastering subjects in the course of education, as will appear.

This idea of relation as the principle of investigating truth has never been expressed more vividly than by a writer of the first half of the nineteenth century, already quoted. The substance of what he says,

much of it in his own words, may be put thus : 'The great principle of the universe, moral and physical, is relation,' and the business of the mind, the point of beginning and the bound of termination — 'the first step it takes from the domain of the sensible, and the last progress it achieves in the region of the intellectual — is the perception of relation. The soul, says Plato, is a harmony ; and by the soul he means that mass of organized thought and feeling which belongs to and is our moral existence ; and by harmony he means just relation. These hoarded perceptions of just relation throughout all things make the soul.' ⁶¹ The last sentence is a significant expression of the teachings of psychology. 'These *hoarded* perceptions of just relation' are the dispositions of mind engendered by practice or repetition and so become mental habit ; these are the effect of following 'the great principle of the universe,' organization — they 'make the soul' in its strength of

achievement; in these hoarded perceptions of just relation is found the measure of a just estimate of values of fact.

The bond of relationship unites all things — all things at least with which we are concerned — and thus brings them into unity; not merely things which are like, but things as well which are unlike — not merely like with like, but like with unlike — all are united in common bonds of relation. Things animate are related by an underlying bond to things inanimate; the exact laws of mathematics to the inexact and conflicting forms of language; the harmonies of the organ to the discords of the earthquake. The subjective in science is related to the objective in art; pleasure to pain; good to evil; order to disorder, so-called. And this idea of relation, at least as a subject for investigation, runs through the scale or 'hierarchy' of things, from the domain of mathematics, the lowest, up through chemistry to life, the highest.

All fundamentally is order; that is the common bond which unites all things; it is the first and last word of Sovereignty. All things, as far as this discussion goes, are either particulars or postulates of the one, general order, with its first great law of cause and effect — that the same causes will always produce the same effect. Disorder is the effect of certain causes and follows in regular sequence, according to the laws of order; so of the differences of languages, the discords of the earthquake, pain, evil and the rest. Order is the formula by which all things should be tested; it is the formula of all economic thinking. Order, through the law of cause and effect harmonizes everything, putting aside the immaterial and finding an adequate cause for waste. Science finds and investigates this perfect working of order, with a perfect method of treating facts upon their intrinsic merits and their external relations — a method which works out its results with the least possible waste.

But if this is the formula for the investigation of truth by science, it is the very soul of administration as seen in the great corporations; these at least know the significance of the teaching of science, and these corporations are the very embodiment of scientific method; they are the practical justification of science. The administration of the affairs of a corporation regards the undertaking in hand from the point of view of energy and of avoiding waste, whether likely to be caused directly by inefficiency or indirectly by failing to bring potential energy up to its best. In other words, the greatest amount of energy with the least amount of waste is the demand; and that demand is made good — made good because the scientific idea of fact and relation is carried out to the utmost. Mutually supporting measures, all converging upon and contributing to the desired result, all building in unity upon the same foundation, by eliminating the immaterial in re-

jecting mere details — these things are the cause of the success of the great commercial and industrial enterprises which characterize modern civilization; success too which extends in equal measure down to the day laborer who follows the scientific method.⁶²

Organization everywhere in the universe, in State, in Church, in business, is the method of efficiency, the means by which waste is avoided and energy enabled to play its greatest part. This is mental economics; the output follows. If a man is able to put economy in practice in his processes of thought, he can produce economic results; the gain in time and power in thinking must work out into practical results. Organization, heightening power by compression, is the answer to the question how to correct false estimate of values of fact, though grown into habit, in relation to the Great Trust, and to all things else. The

schools, it is conceived should act accordingly. If their work is carried out upon that idea, with order as the general formula and point of view and particular formulas subordinate to the same according to the subject of study, the student will find himself pursuing the study of order wherever he may be or whatever direction may be given to his work; he will soon discover that it is all a matter of relations. He will go from one recitation room to another only to take up the same line of work from another point of view, until his mind works in the one effective way by force of habit. As the general formula of order becomes more and more familiar, with its subordinate formulas for the divisions of his work, unity will force its way into all his thinking as fundamental, in the midst of differences. Difference itself will be seen to dissolve, by the bond of relation, into unity. The student may, for instance, be engaged in studying such apparently diverse subjects

as economics, language, algebra and Roman history, only to note that, while each has its own formulas, all the subjects are but so many varying phases of the one universal order; economics treating of physical well-being, language the medium by which this (with other things) is expressed, algebra the very sphere of the formula, and Roman history the story of well or ill-being, in the past — all as so many exponents of the general formula of order. He will see that art, as manifested in music, painting, sculpture and architecture, is allied to science as manifested in mathematics, physics, biology and geology; external differences being resolved in the end into the one Supreme Order. All his work will be to him an open book of one theme, with its formulae of common factors for a point of view.

The opposition or contradiction of things will indeed often turn out to be no more than a matter of a difference of terms, or of

the addition of a particular ingredient. The common factor may be hidden from view by the composition and the new name applied; but investigation, becoming an impulse, will reveal the facts and reduce the number of elements accordingly. The student will discover that he is only using, as it were, the shorter method of algebra for the longer and more cumbrous one of arithmetic; the common formula applying to all his work, the particular formula to the divisions of it. So he finds that he is everywhere cutting short the piecemeal, long and wasteful process of studying subjects, bound together by common properties, as mere individuals; economy in a marked degree taking the place of waste. He is not lost in details — he does ‘see the forest for the trees;’ he begins to see the outlines, to change the figure, of a structure rising as a whole from foundation to roof. He is eliminating waste as a matter of course; he is forming a masterful habit; more than

that, and most of all, he is organizing his brain, which is the beginning, middle and ending of the science of modern education.⁶³

The inductive philosophy of Bacon sought the same end of unity, but it sought it, not by elimination but by universal inclusion; nothing by that philosophy could be immaterial. And in the small world of Bacon, Leibnitz and Newton it was possible to bring everything into the universal order, that is, it was possible to minds of the greatest grasp — the philosophy could be for such only — to know all things of that world. To-day, in the enormous increase of things brought within the range of human investigation, that has become impossible, and generalization must begin upon the principle of eliminating the immaterial. This form of inductive science does not require the mind of a Bacon; the ordinary mind may be prepared for it, in the schools.

It must now be plain how this discussion is tending, or rather hastening to its conclusion; which however must be kept somewhat in check. The fashioning of the brain, for better or worse, is going on constantly during its plastic condition; it may be disorganized, as current modes of education are doing their work; it may be organized, as science would teach the way. If the method of science is followed in the schools, the result will be according to the teaching; the plastic substance of the brain will take the form of the method, as the method is pursued and acquired by the pupil. That is the necessary condition. The results of scientific method, the results achieved by administration in the case of the great corporations, could not possibly be gained by the operations of a mind not organized, by a mind whose dispositions were created by acquiring mere facts, though the facts were enough in number to make a walking cyclopædia of the possessor. The

fact that the results are produced means necessarily that the mind which produced them was organized.

To produce the organized brain then the necessary condition is organized education, education based upon the principle of correlation, the principle of the universe. Education must lay down its universal postulate of Order as formula and foundation; upon that it must build, classifying and making its divisions, each upon a foundation or formula sufficient, like the universal one, to carry its own superstructure — rejecting the immaterial, that is, rejecting details. As this is done, the mind is fashioned; it will then have the tendency, growing in strength as the process goes on, to work out its problems in the most effective way. To cause it to work otherwise than along the pathways made in the brain would be to make a railway engine run upon the ties.

It must be equally plain that the process

should begin early in childhood, as early as the child is able to understand his first lesson in the relation of things. It should be going forward to good purpose in the grammar school, as it is in point of fact in some model schools of that grade ; and it should never cease until the student goes out into the world to apply it to the work of his life, where indeed he will continue to use it as of course, making the lines deeper and deeper, and himself stronger and stronger.

Meantime the higher schools and universities will have to deal with what is sent on from the lower grades, in its present state. And that is a serious business, as everyone knows who feels the need of a change. The brain has already received much of its shaping ; it has taken lines which it will follow, or rather — for the lines are mostly short, individual ones — it has formed dispositions which will not easily give way to others, which at best can now be formed only by very hard work.

The dispositions are those which the mind as a mere reservoir of things has appropriated; they are not active, vigorous, energetic. What is to be done? How is energy to be freed from the impedimenta — baggage which has been dumped in the way?

The question calls for some consideration of the term energy. What energy really is the experts must point out; but some things are plain enough. For the purpose of these pages it is clear that energy is centrifugal movement — the driving power or function of the mind. It is more than feeling in motion — the will more than the intellect. It is the great instrumentality for bringing things to pass; the property or function therefore which least of all a man can afford to neglect. Further it requires resistance as a condition to effectiveness, even though the object sought be highly pleasurable; something more than feeling is concerned, though it will have its greatest success no doubt in attacking obstacles

arising in the pathway of the mind's natural bent, as every one's experience testifies. The resistance too must be without, external to the mind, if energy is to do its best work. If it is within, if it is in imperfect motor paths of the brain, energy cannot work well; at any rate it cannot work without friction and waste in the effort to remove the obstruction. Still if these internal obstructions are not complete, and they will not be except in idiocy or hopeless insanity, there will be some opening through which the energy at hand can endeavor to break and construct new lines of disposition. That is the ground of hope of the student who, having become a victim to vicious method, has the real desire to make something of himself; and that ground of hope is enough to encourage him to put forth the required effort. To give energy the best possible play and outlet is the one desirable object of the processes of the mind, for success in life; energy shapes the brain for work.

Every sane person may have a measure of that, if he will, though energy appears to be something more than effort — more than feeling and effort; and if he will have the best prospect of results, let him break up the evil and plant anew in the way indicated, by organizing his mind. Let him seek the best opportunity, at the earliest moment, while brain stuff is still plastic. He will find it more plastic now than it will be five years hence, much more so than ten or fifteen years hence; it may then be too late.

Many teachers will themselves need teaching, as the writer well knows from personal experience; for the teacher must be able to think in terms of mental economy — he must know the significance of the formula as a shortening process in his own thinking — before he can teach and apply the doctrine. But he should find sufficient encouragement in the considerations already presented and in the success of those who have already qualified, to undertake and

acquire the preparation needed for the work. To reach the desired place should not be beyond the ability of any intelligent, earnest and determined man or woman otherwise qualified to teach.

The foregoing inquiry must now be brought to a close. The Problem of the Great Trust is a tremendous one, alike in the contending forces and in the issue. The greatest forces of life, privilege in the form of industrial and commercial enterprise on the one hand and disintegrating tendencies in many forms on the other — these are opposed to the Trust. And if there is to be ‘government of the people, by the people, for the people,’ the State must be greater than all the forces which oppose it. It will not be enough to pass statutes and decide disputes; there must be power behind these to enforce the will of the State. There must be men competent both to direct and to execute that will.

There are breakers ahead if the problem is not solved according to the aim of the State, and there are perhaps breakers ahead if it is so solved — breakers caused by the very solving, for the forces in opposition will not yield until compelled, and the State hangs in the balance on the result. The conflict must go on to the one issue or the other, success or failure of the attempt of the State to establish the Trust; failure meaning of course an entire change in the conception and purpose of the State, and plunging it into the unknown; success being the greatest achievement in the history of social energy.

Success however would not import that the tides of social movement are to be turned back, in any other sense than that they should be kept under control by the State. There are and always will be inequalities of mind among men, and these must work out into inequalities of relation; which in plain English means that monopoly in one

form or another is inevitable. But the effect in monopoly may itself be subject to the control of the public; if the State can find men capable of meeting the requirements. There is but one way possible, the way of education already described. If organized education in the schools throughout the land will turn its work to organizing the brain, it may be possible for the country again to furnish its Washingtons and Hamiltons, its Jeffersons and Adamses, its Marshalls and Websters — its men of boundless energy and ability. Unless human energy, capable as it is of appearing, and actually appearing in other countries in the form of government, and appearing sufficiently in this country in industrial and commercial like, is now incapable of appearing here in the same degree in government, the days of the great administrators should not be past. There is only one way to provide them; but the possibility of success may well innerve, as it dignifies, the work of

every worthy teacher in the land, lifting his vocation to a plane which it has never reached before. The teachers hold the key of the future Commonwealth.

Organized education, seeking to give the country the benefit of the organized mind, will however provide other men than administrators. It will provide men for all vocations and purposes; the man who wishes to devote himself, for a longer or shorter time, to some particular theme, to research, to specialization in any way, as most men find it necessary or desirable to do, will be fitted for the work. The method which of course must precede research and specialization, is for all problems, for all work whatever it may be. The great thinkers and scholars of the world, the really great teachers and writers, the leaders in all departments of life, have gained distinction by having the organized mind.

But great men are not the only men needed by the State. The difficulties of

maintaining the State should be greatly lessened by the work of the schools in providing for the proper mental development of the masses. The schools, by pursuing the method of unity, should and may provide followers as well as leaders; they should provide a general body of coherent citizenship. This will inevitably make duty on the part of the masses — on the part of the laboring man in particular — the mainspring of relation to the State. It will show the individual in the more lowly stations of life that he, as much as his more fortunate neighbor, as much as the man of high station, is part of the Sovereign and therefore bears the same relation to the State, in the matter of duty, which others bear. Duty will thus be put in its right place in the government of men, taking the place of vague and unsound notions of right, which mislead the many to seek what they may not really have earned, and to distrust and even hate the State which, acting its true

part in the aim of its Trust, in the regulation of inequality, can grant no more than is due. There is nothing more important than this. With the rank and file made coherent and unified, the leaders should have less difficulty than they now have in maintaining the State and keeping it to the pledge of its Trust.

The nature of that Trust is now clear. Absolute equality there cannot be while men are mentally unequal; just regulation of inequality is all that the trust can mean and all that in law is to be desired. The duty of the State, according to Bacon, 'to make inequality equal,'⁶⁴ must not be taken in the sense of leveling down or leveling up, except as artificial differences have been created. Absolute equality is nothing less than a metaphysical fallacy; there is no such thing in organized society; there never was—all experience contradicts it.⁶⁵ Putting any such notion aside, for the true one of just regulation of inequality, the way is

cleared for serving the aim of the State and making good the political equation.

To sum up and generalize this chapter: —

Equality in the reasonable regulation of inequality, by the State in trust, is in accordance with the facts of social science and well-being, and is therefore the just as well as the professed aim of the American State. The attainment may be 'a far-off, divine event,' but the aim is an equation of the truth. The attainment is possible; but it is conceived to be possible only by applying to modern education the requirement that energy shall work through organized mind, by the process of elimination, to its object.

Education on these lines should fulfil the condition necessary and sufficient for all achievement, that to think a problem through in all its bearings, the currents of mental energy should have free course through the brain and come to complete convergence upon the critical point.

AN ILLUSTRATION

THE subject may be concluded with a special instance, by way of illustrating the old and the new modes of legal education.

The Law School of Boston University was opened in September, 1872, and for thirty years was a well-known representative of what is commonly called the lecture system of instruction. This consisted of lectures delivered by various men, supplemented (after the school had been in operation for two or three years) by class recitation on the subject of the lectures, conducted by instructors chosen from the graduates of the school. The lectures more generally consisted of the statement of the important rules of law, with authorities cited in support of them, many or few, according to the development of the subject by the courts and the purpose of the lecturer. The main rules, with qualifications

and distinctions and such illustrations as seemed desirable, were expounded by the lecturer slowly, so as to enable the student to take as full notes as he desired ; the lecturer in fact often dictating more or less, sometimes the whole, of a lecture to his class. The class exercise, on the part of the student, consisted accordingly of taking down the substance of the lectures in notebooks, and then preparing, on the basis of the notes, with such examination of the authorities as he chose to make, for the recitation, which followed a day or two later. Each topic was treated by the lecturer as a distinct and separate branch of the law, with such suggestion of its relation to other topics as appeared on the face of the subject or as seemed to the lecturer necessary or desirable. The body of the law was treated as a unit only in the sense that it was composed of certain divisions or topics ; little if any attempt was made to connect the whole in a coherent system,

though senior students were encouraged to draw out, with analysis of Blackstone as a general guide, a scheme, suggested by their studies in the Law School, of the whole law.

This was the usual method, though not the universal one. Instruction upon some of the topics was conducted on the idea of presenting to the student fundamental theory, using rules of law, not as substantive matter, but as secondary and incidental, as illustrative, as means to the main purpose of giving to the student an idea of the structure of the legal corpus. This too was taken down in note-books by the student and made the basis for the recitation before the instructor. This particular method was carried on in some cases with a systematic analysis of the decisions of the courts, by way of instructing the student how to study and make use of such authority.

Whatever method however the particular lecturer followed, it was on the whole a

memory method. The mind was virtually treated as a receptacle for the fruit of the lecturer's studies and experience; to fill the memory from that ample store was the beginning and end of the student's work. Memory too, as it dominated the method, became naturally the test of results. It was inevitable that in most cases the student with the best memory came out best in the examinations.

During this period the school turned out many superior men, some of whom have attained high distinction. These men would have done themselves credit anywhere and under any method; they belonged to the class of men elsewhere spoken of, men already prepared for work, either by inheritance or by an education which had fitted them for it. Their success is not an argument in favor of memory methods.

The beginning of the present century plainly marked the beginning of a new era in civilization. The closing years of the

last century were a period of breaking up of a long and comparatively even state of things. The nineteenth century had indeed been a century of great progress, but until near its close that progress, apart from its wars, had been regular and even. By the end of the century all this had changed; social and economic forces, stirred out of their narrow confines, were at last pressing all before them and bringing to pass a new order and a new law. Old things were rapidly passing away; the age of steam had reached its climax; the age of electricity and radium was at hand, making light of the pride of the nineteenth century.

At about this time, that is, in the summer of 1902, thirty years after the opening of the Law School, as already mentioned, the present administration of the school began office. That appeared to be a time of the conjunction of things; all was ripe for a change corresponding with that in the world without, and the decision was

made accordingly. If other schools had made important changes some time before, those changes may have been premature, or if not premature, may have forestalled and prevented action when the time arrived for the more significant changes demanded by the new order of things. The Law School of Boston University was fortunate in having held out until the real time for change had arisen. And it should be noticed that the new conjunction was not merely one of things pertaining to legal education. It was becoming plain enough that current education, in possession of the field now for a whole generation, was not answering expectation; it was not producing leaders, as education should produce them and as it was producing them in other countries. It was time then to examine the whole field of education, of which legal education was to be treated as a part, and to put the latter upon a footing upon which it could stand.

Dynamics must for one thing be substi-

tuted for statics. Psychology and physiology declare that mind and the nervous system are processes—activities—of energy; and education should accept and act upon the declaration. The student must be required to do his own work—to put into exercise the active functions of his mind as functions which should be dominant, treating cognition and memory as servants of energy, as means merely to an end and not as ends in themselves. The notion that the student could be raised upon the shoulders of his teacher by taking down and committing to memory notes, or the whole, of a lecture was to be dispelled; the student must be made to understand that it would be necessary for him to go through the discipline of hard work which all teachers worthy the name had gone through, before he could hope to be able to bring serious things to pass.

But it was considered not enough to substitute dynamics for statics—energy for

cognition and memory. Energy might be misdirected or imperfectly directed and thus made to run to waste. Dialectic, which was coming to be widely accepted, was in itself an imperfect method of employing mental energy ; it would solve no problems of to-day, any more than it solved the problems of the schoolmen ; it should not be made an end, but a means. Unity, lightly treated in education in general and in legal education in particular, should be made the foundation of education. This principle was first announced in the Catalogue of the Law School for 1903. After a general statement of the lines of work then to be undertaken, the Catalogue laid down the following general platform for the school thereafter :—

‘ The work in these courses is treated as a unit, . . . each of the subjects having its proper relation to the others, and the whole its connection with the ordinary work of the school through the first-named of the

subjects announced, to wit, Jurisprudence,' for which Sovereignty was directly afterwards substituted, as the source of Order and the expression of Unity.

Meantime a course for the Master's degree was projected and announced in the same Catalogue, in general terms. In the Catalogue of the following year the project was more fully stated. 'The object,' it was said, 'of the work for the Master's degree is to fit the student for usefulness in public or private life, at home or abroad' — the latter word had for its connotation the results of the then recent war with Spain — 'having regard to new paths opened to men of legal training by the needs of the twentieth century. . . . The duty of the Law School is not discharged by merely fitting men for the bar; it must give them a broad outlook and a competent knowledge of the condition of the times, so as to fit them for the administration of great affairs everywhere calling for adequate preparation.'

Before the Catalogue last quoted was prepared, I—it may be permitted me now to assume the personal pronoun—had called to my aid Brooks Adams, Esq., whose wide experience and energy were well known; and he had suggested to me the word ‘administration,’ used in the last quoted sentence, as a key-note to the new purpose. The relation of administration to a scheme of unity has been sufficiently considered in the foregoing pages.

The declarations quoted have been repeated in Catalogues, in public and private addresses and contributions to the press, and in annual Reports to the President of Boston University from that time to the present.

The instruction of the school was reformed accordingly, and the student set to work, in one way and another, in a method of progressive tension, directed to the development of mental energy, on lines laid down of correlation and unity. The greater

part, or what may be called the inner circle, of the work of the school has been thus directed. This is not the place to show in detail how the requirements are carried out; the Catalogue and other publications must be referred to for that purpose.

The method in general is worked out in this way: Proceeding upon the principle that general subjects as well as the divisions of a subject, are only products or manifestations of underlying unity, the instruction may be assumed to begin with the most fundamental conception of what education deals with—the Order of the Universe proceeding from Sovereignty; while it actually begins with a statement of the most fundamental conception of the subject of legal education—the requirement of Order in human conduct, proceeding from human Sovereignty. The subject-matter of such conduct is now put before the student as a coherent whole, composed of certain elements or raw material worked up by addi-

tion and modification into parts mutually related to and supporting each other, as opposed to considering it as made up of a number of detached sections; and then each part or division is taken up by stating first its relation to the whole scheme and then its broadest foundation or generalization and building thereon, until the general lines of the structure are completed. The work is then done; details are used no further than is necessary to carry out the purpose of constructing the edifice, the rest being rejected as immaterial to the present purpose.

The student is now informed that in dealing with human conduct the State is concerned after all with but a small number of facts, that these are constant, that the multitude of situations which enter into the conduct of men in their legal relations are but variants of these constant facts, and that as the student goes from one branch of his work to another, from one recitation

room to another, he is but going to another phase of one of these constants and its relation to the law ; the same fact appearing in a hundred forms and disguises. This is the economy of the subject, the elimination of waste, the shortening of the process of education.

At the same time care is taken to show the student that the law is a very practical subject, in that it deals only with matters of fact, that the facts with which it is concerned are in large part social and economic, and that the changes in social and economic conditions produce, sooner or later, corresponding changes in the law — that the changes in these conditions are the cause of most of the important changes in the law.

In conclusion I may be permitted to repeat, that the method of education urged in these pages is intended to foster dispositions in the nervous system of the brain, in its plastic state, which shall give to it the

very reflection of the method. In other words, the purpose of the scheme presented is to assist in creating an organized mental machine for the flow of Energy through channels of Administration, to an economic result.

Shortly, organization produces unity; unity produces concentration; concentration produces economy. Such is the theme of this chapter.

NOTES

NOTES

Newspapers cited are all of the year 1910, precise dates being given when considered important

1. Official Reports of the Arbitration.

2. See e. g. Province Laws of Massachusetts, ii, 166 (1721); iii, 12 (1743); iv, 606, 1022 (1763, 1768); ix. 180 (1712).

3. The Boston Herald.

4. Report of Attorney General to Legislature, April 25, 1910.

5. The Boston Herald.

6. The subject is so completely set forth in the Report of the Committee, and is so characteristic of the method of monopoly in private hands, that it deserves to be given in full. It runs as follows:

‘The five large contractors, though technically separate, have a similar system and practice in many details of the business. The same individuals control three of the contracting concerns, and it may be said that these individuals, with representatives of the other two contractors, can practically determine any question of policy for the whole milk business.

‘Acting together they would have it in their power to exercise a dominating influence in deter-

mining the price of milk to consumers. Acting together they have had, and now have, it in their power to fix arbitrarily the price of milk to be paid to the producer, and the evidence presented establishes the fact that uniform prices to the producer have long prevailed, fixed at times by meetings between the contractors and producers, and in other instances by a generally accepted, though tacit understanding.

‘This control of the producers, with the resultant domination of the market in Boston and vicinity, tends to create and maintain a monopoly in the sale of milk and tends to restrain competition in the supply and price of such milk.

‘That the restriction of the supply by lowering the price to the producer during the summer season is one of the definite objects of the contractors was frankly admitted by two of their representatives, who testified that their energies and efforts were partially directed, as a detail of their business, to the limiting of the quantity of the milk entering Boston, and that the lowering of the price to the producer during the summer months was an effective means to that end.

‘As the milk supply of Greater Boston for the most part comes from the farming sections of the State, and a part from without the State, it will be readily seen that the cost and methods of transportation are of great importance to the consumer as

affecting not only the cost of milk to him, but also its freshness.

‘All milk cars which are operated in this State, while manned on the Boston & Maine railroad, and on the New York, New Haven & Hartford railroad by their employees, are leased to the milk contractors. On the Boston & Albany railroad, now a part of the New York Central and Hudson River railroad system, the milk cars are not only leased to the contractors, but manned by men in the contractors’ employ.

‘Milk carried in these milk cars is properly cooled and iced in summer, and warmed in winter to preserve it, while milk not shipped in these milk cars can only be carried in ordinary baggage or freight cars.

‘For the producer who desires to ship his milk independently, rather than to sell it to the contractor, to be obliged to ship it in baggage or freight cars, or in the iced milk cars leased to the contractors and in some cases manned by their employees, which contractors are his competitors at the point of distribution, is unfair and ought not to be tolerated.

‘These railroads are operating here under franchises granted to them by the Commonwealth for the purpose of enabling them to act as common carriers. No railroad in the State is transporting milk at present as it does other freight and giving

it the added care which it requires owing to its perishable nature.

‘The railroads should own, control, operate and man cars for the transportation of milk as common carriers, putting into effect the open car system, so called, and should run such cars where the traffic is sufficient to warrant it, providing caretakers and using such means for icing and preserving as milk requires. We recommend the immediate adoption of such a system.

‘There are doubtless lines running through sparsely settled sections where the quantity of milk shipped would not warrant these special facilities for its transportation. This phase of the matter can be effectively supervised by the board of railroad commissioners if the transportation statutes hereinafter referred to are repealed.

‘We are of the opinion that the provisions of law dealing specifically with the power of the Board of Railroad Commissioners over the railroad transportation of milk would be held to be an exclusive proceeding depriving the said Board in part at least of its general recommendatory supervision of milk transportation.

‘The Board is therefore limited at present in its power to fix rates for small shipments which are fairly proportionate to the rates in large quantities. However excessive or unreasonable the rate for large quantities might be, the Board would have to

fix the rate for small shipments on the same scale. This method is clearly wrong in principle.

‘The Board of Railroad Commissioners ought to have full authority to recommend with reference to the subject of milk transportation as to both rates and service. The committee on railroads of the present Legislature has to-day reported a bill repealing the foregoing section, which, if adopted, will remove those undesirable limitations, and we believe the bill should be passed, and we recommend that in considering the rates for transportation of milk the flat rate system, so called, now prevailing in the State of New York, be carefully investigated and considered with a view to its adoption in Massachusetts if found to be in the public interest.

‘The production of milk near the point of consumption would be further encouraged by the use of trolley lines as milk carriers. The law permitting street railways to carry milk should be amplified to provide for joint use of tracks so that a road by refusing to take the milk car of another road could not prevent the milk from entering the market.

‘The “marketing” of milk, if by this term its delivery for consumption in Boston and vicinity is meant, is largely controlled by the five large contractors. The routes through the State where the contractors run their cars and collect their milk

are so arranged that they compete at a few points only.

‘It is claimed by some that the territory is divided among the contractors, and that they have an understanding by which one contractor does not enter the territory of another. While the contractors claim that, except in a few instances, one does not enter the field which another has opened up and developed, because it would be unprofitable to do so, whether there is such a definite understanding or whether this division of territory is a consequence of the transportation system is problematical.

‘We find that the firm of D. Whiting & Sons (controlling the C. Brigham Company and the Elm Farm Milk Company), H. P. Hood & Sons, and the Boston Dairy Company are active competitors in the marketing of milk, and upon the evidence to be filed with this report we are satisfied that the present retail prices charged by the contractors for milk are sufficient to afford them a fair profit upon their investment.

‘In dealing with so important a subject, which vitally affects the health of the entire community, more especially in our cities where congestion generally prevails, and where children are almost universally dependent upon milk for food, the committee has kept constantly in mind the requirements of the consumers. They should be provided

with clean, fresh, pure and wholesome milk, this supply to be produced under conditions such as will make certain the existence of the qualities named.

‘It is not enough that occasional tests be made at the point of distribution. An adequate system of inspection requires that the source of supply be frequently examined. The premises where milk is produced ought to be regularly inspected. The cows should be examined and kept clean and in a healthy condition.

‘While the cities and towns of the Commonwealth could prevent the sale of milk within their limits, where the source of supply has not been so inspected, we find that in the city of Boston the inspection is manifestly insufficient.

‘This work cannot be properly and economically done by the health officers of the several cities and towns. It should be done by some central authority, which would result in an efficient and uniform system of inspection being enforced. To formulate such a system requires an examination of existing laws, the enactment of new and the repeal or modification of present laws which would consume much time.

‘In order that this matter may receive sufficient study to be intelligently and properly settled we believe it would be wise to require the dairy bureau to consider this subject and to present to the

next general court [the Legislature] a bill covering the subject of inspection in the manner suggested.'

7. *Northern Securities Co. v. United States*, 193 U. S. 197.

8. *In re Debs*, 158 U. S. 564.

9. *Atlantic Monthly*, July, 1910, A Problem in Civilization.

10. *The Aryan Household*, William E. Hearne.

11. See e. g. Att. 1, 3; Fam. 14, 4; Q. Fr. 1, 3; Fam. 14, 2; Fam. 14, 1.

12. *Milton*, Nativity, xxv.

13. *The Christian Advocate*, New York.

14. Statement attributed to Hon. Andrew D. White.

15. 'Judge Colt of the United States Circuit Court to-day denied a motion made by John L. Bates, receiver of the National City Bank of Cambridge, for a special precept of attachment for \$300,000 against . . . directors of the bank. The receiver sues to recover for losses sustained by the embezzlement of funds by George W. Coleman, alleging negligence on their part. The motion was denied for the reason that there was no precedent for such action and the rules of the court do not provide for it.' *The Boston Transcript*, Nov. 21, 1910.

16. *The Boston Herald*.

17. *Derry v. Peek*, 14 App. Cas. 327.

18. 53 & 54 Vict. c. 64.

19. *Moral Overstrain*, 83, 84, George W. Alger.

20. *The Boston Herald*.

21. *The Boston Herald*. In *Moral Overstrain* Mr. Alger has a valuable chapter on Criminal Law Reform.

22. There could hardly be a more striking illustration of superficiality, the deep-seated evil considered at the end of chapter I, pp. 96-100. Intention and knowledge having a like product, it is assumed that they are equivalent. Nothing could be more untrue; intention and knowledge are poles apart in the economy of the mind. Intention is idea plus a stretching forward for realization; it is essentially an active function of the mind, closely related to will — intention realized is will. Knowledge is idea without the stretching forward — it is essentially a passive function. It may, by reason of its content and clearness, excite desire and so finally affect intention and will; but that is all. 'Everything which is really to have power over us must manifest itself as emotion or passion. . . . A thought can suppress a feeling only by exciting another feeling which is in a position to set aside the first.' Höffding, *Outlines of Psychology*, 284. 'It remains completely unintelligible how a decision of will can arise purely from intellectual processes.' Wundt, *Human and Animal Psychology*, 228. See Arnold, *Psychology applied to Legal Evidence*, 41; James, *Psychology*, ii, 393. This is to

get down to the foundation of things, where things may be seen as they are. The end to be attained in life is doing; knowledge is a means to that end. But the psychology of the subject is more apt to be ignored than denied.

23. A picturesque account of these great schoolmen and their dialectic, in imaginative setting, may be found in Henry Adams' *Mont St. Michel and Chartres* (privately printed), 254-267. See the whole of chapter XIV. The fruitlessness of mere dialectic is here well shown. Each of the disputants silenced the other — because the discussion was of abstractions. Champeaux championed universals, following Plato; Abelard, particulars, following Aristotle. Neither was any further along at the end than at the beginning, except that Champeaux was promoted by the Church, and Abelard was sent to a monastery. 'Your universals are only concepts,' said Abelard to Champeaux; 'You are really a pantheist.' 'By the same token,' replied Champeaux, 'you are, by your concepts, either a pantheist or a materialist. You may take your choice.' See Adams, *supra*. Thus the energy of capable men ran to waste in mental gymnastics; and the same sort of waste is going on to-day, wherever dialectic is severed from reality and turned to abstraction.

24. The Boston Herald.

25. *Perry v. Porter*, 124 Mass. 338.

26. *So far*, this might be no more than the doctrine of universals, of Plato and schoolmen like William of Champeaux (*supra*, note 23). As mind includes all its particulars, no particular energy of it could equal its general energy as shown when Anthropoid became man. But science does not rest upon Greek or medieval dialectic.

27. *Brown v. United States*, 150 U. S. 93; 159 U. S. 100; 164 U. S. 221; Alger, *Moral Overstrain*, 185-188.

28. Brewer, J. (two other judges concurring): 'I dissent. First. Because after three juries, thirty-six jurors, have agreed in finding a defendant guilty of the crime charged, and such finding has each time been approved by the trial judge, the judgment based upon the last verdict ought not to be disturbed unless it is manifest that the verdict is against the truth of the case, or that the court grossly and prejudicially erred on the trial. Second. . . . Justice and the protection of society unite in saying that it is high time such a crime was punished.' 164 U. S. 221, 225.

29. The Judicature Acts.

30. The Boston Herald.

31. A law has lately been passed in France forbidding illustrations in the newspapers which have to do with crimes committed within ten years. This includes illustrations of trials and police action in securing evidence of crime.

32. It appears to be a disposition or tendency, which may be acquired by repetition, of brain cells to explode together upon the action of a stimulus upon any one of them. 'When a certain group of cells has been exploded in a certain way, it retains a disposition to explode again in the same way; every exercise of nervous function leaves behind it a functional disposition. . . . The strength of the functional disposition in a particular case depends upon practice . . . and upon bodily tendency.' Titchener, *Outline of Psychology*, 289.

33. 'It is perhaps time that the community should entertain a more definite conception of its own supreme claim upon the allegiance of every one of its members, and should arm itself more fully against movements which directly assail not this or that class of citizens, but the common interests of the whole population, or which aims at mere submission of the social order. The centralization of the services formerly performed by piecemeal, or by wholly disconnected individuals, has laid the community open to comparatively easy attack upon its supply of food, water, light and means of communication. New social dangers have not yet called forth the necessary precautions which it is the business of statesmanship to provide.' *The Times* (London), quoted in *The Boston Transcript*.

34. The true equation may be thus expressed:—

Let x = Equality under the Great Trust (the equality aimed at, which includes regulated inequality).

y = Present excess of Inequality.

z = Amount of State regulation to be taken from y to reduce y to x (requiring enormous energy).

That is, $x = y - z$.

Meantime the country 'rubs along,' as a provincial Governor of Massachusetts, in a tight place, once put it, with the dangerous false equation that $x = y$, less a small subtraction of energy, in anti-trust laws and the like. Let any one contemplate the difference between the true and the false equation, and the danger.

35. The law of the dissipation of energy was laid down in 1852 by Professor William Thomson, afterwards Lord Kelvin, as follows:—

'1. There is at present in the material world a universal tendency to the dissipation of mechanical energy.

'2. Any restoration of mechanical energy, without more than an equivalent of dissipation, is impossible in inanimate material processes, and is probably never effected by means of organized matter either endowed with vegetable life *or subjected to the will of an animated creature.*' Mathematical and Physical Papers of Thomson, i, 514, Cambridge, England, 1882, as quoted by Henry

Adams, Letter to Teachers of American History, 3 (1910, privately printed), reviewing the subject. Physicists hold that this includes human energy. Outright evolutionists would not agree; but the physicists are the experts in regard to mechanical energy at least. If mechanical energy is falling, it is hard to see how human energy can escape; the permanent cooling of the one must chill the other. The doctrine goes to the root of the matter and must be considered in a discussion of education. Of course if the doctrine is not true of vital energy, the case is the stronger for these pages.

Physicists who adhere to the doctrine of the conservation of energy agree that the availability of energy is falling. See e. g. a paper on Modern Conceptions of the Universe by G. F. C. Searle, F. R. S., University Lecturer on Experimental Physics, Cambridge, England. *Journal of Victoria Institute*, xlii, 58, 71 (1910). Mr. Searle treats human energy as a different thing from inanimate energy.

36. Disintegrating tendencies in the family have been spoken of in the text as most sinister evidence of the dissipation of human energy. These tendencies are plainly increasing. The same may be said of the evil of unemployment, with its consequences. The two are ominous enough; the downward movement is

at present steady and general, in spite of all efforts to check it. Even in cases of employment, at any rate in large establishments, the change in recent years from personal ambition to loss of the same is very marked.

37. 'Holland,' in *The Boston Herald*.

38. *The World's Work*, May, 1910.

39. *The Independent*.

40. Antigone, the heroine of Euripides; Father Damien, the Catholic hero of the leper colony; Harry W. Cox, whose death in London last July 'is the end,' as a London newspaper says, 'of one of the finest pieces of self-sacrifice that the records of medical science can show. Mr. Cox's researches into the action of the Röntgen rays have conferred an inestimable benefit upon humanity, but . . . at the expense of his life. . . . The dying man said, in the midst of terrible pain, "I would gladly go through it all again to accomplish what I have been permitted to accomplish in perfecting this apparatus for the benefit of my fellowmen."'

41. *City Building in Germany*, Scribner's, May, 1910, Frederick C. Howe.

42. *The Baltimore Sun*.

43. Professor F. W. Maitland, as quoted by H. A. L. Fisher in *Frederick William Maitland, Downing Professor, &c: A Biographical Sketch*, 1910.

44. *The Destruction of Ancient Rome*.

45. The Boston Transcript, Vandalism in Rome, Homer Edmiston.

46. Judicial Dispensation from Congressional Statutes, American Law Review, vol. 41, p. 65, Dean Trickett. See also Judicial Review, Michigan Law Review, December, 1910.

47. Everybody's Magazine, Pittsburg and Privilege, August, 1910.

48. Brain and Personality, Hanna Thomson, 1909.

49. Physiology of the Nervous System, Professors Hough and Sedgwick.

50. Hanna Thomson, *ut supra*.

51. Psychology, Abridged ed., William James.

52. The Outlook, June 4, 1910, The Right Way to Teach Zoölogy, William T. Hornaday. See a reply contesting some of Dr. Hornaday's views, by A. J. Grout, The Outlook, Nov. 19, 1910.

53. *Ibid*.

54. *Ibid*.

55. The 'Christmas Conference,' so called, 1784, held in Baltimore, Dr. Coke (who the same year had been ordained and set apart for America by John Wesley) and Francis Asbury (trained under Wesley and appointed in 1772 his assistant in America, and at the Conference of 1784 ordained by Coke) were elected Bishops of the then organized Methodist Episcopal Church. The quotation about Asbury is from the Universal Cyclopædia.

'Whose genius for government was equal to that of Richelieu' is Macaulay's estimate of Wesley, which is generally accepted.

56. Cokesbury College, near Baltimore, the building for which was twice burned down within a short time. The project was then abandoned.

57. London newspaper, reporting an educational meeting in London, July, 1910.

58. Metropolitan Magazine, August, 1910, Nerves.

59. Horace Binney Wallace, of Philadelphia, a Memoir of whom has been written by Clarence S. Ward, of Boston. Wallace was born in 1817, and died (in Paris) in 1852. He is well known to American lawyers as co-author with the late Judge Hare of American Leading Cases, a classic in legal authorship, and other works.

60. Metropolitan Magazine, ut supra.

61. H. B. Wallace (Ward's Memoir), ut supra.

62. There is no reason why economy in education under scientific management should not be as great as it is in industry. See the following note.

63. The economy of scientific administration is of course capable of mathematical statement. 'Our railway managers have become so much more scientific in their methods of operation that they have been able to give the laborer an increase of three cents for every ton of freight carried, give the

capitalists an increase of three cents for every ton carried, and at the same time reduce the charges for carrying a ton of freight by nearly six cents.' Wall Street Journal, quoted in The Boston Transcript.

More interesting still is the evidence recently brought before the Interstate Commerce Commission in certain industrial investigations. Evidence in regard to the work of bricklayers is significant. 'Scientific management has so eliminated unnecessary motions that it has reduced the motions of a bricklayer from fifteen [eighteen, according to R. T. Kent, *infra*] to six. As a consequence, bricklayers who have heretofore laid a thousand bricks a day have increased their output to twenty-seven hundred. The witnesses,' brought from different industries, 'were unanimous that under scientific management production was increased, cost was reduced, profits enlarged and made more secure, wages advanced,' &c. The Outlook, Dec. 3, 1910. See also R. T. Kent, editor of Industrial Engineering, on Efficiency, Boston Transcript, Dec. 28, 1910; and The Outlook, Jan. 7, 1911, Passing of Humpty Dumpty.

But scientific management of industry and scientific management of education are only different expressions of the same principle or formula.

64. Essay of Judicature. Bacon here is speaking of high-handed wrongdoing in general; 'then

is the virtue of a judge seen, to make Inequality Equal.'

65. H. B. Wallace, in a letter to Dr. John McClintock, Ward's Memoir. In the quotation Wallace speaks of general equality as a mere metaphysical notion, which has no place in the laws implanted in man's social nature. Wallace does not, however, propose a law of inequality.

Such a law is what to-day, in America and Europe, people are blindly struggling for — some just regulation of the advantage which one man has over another in life. It works blindly now, as in the past, with those who would reduce all men to a common level. That is the mere metaphysical heresy — a 'golden fog' — to which men of the closet and of Brook Farm experiments are naturally attracted.

INDEX

INDEX

ABELARD	82
ADAMS, BROOKS,	
on regulation of privilege	28, 29
AGASSIZ	153
ALGER, G. W.	70, 71
ANNAPOLIS,	
education at	164
ANTHROPOID,	
energy of	103, 106
ANTI-TRUST LAWS	13
ARYAN FAMILY,	
divorce in	33-46
a sovereignty	34-46
House Father in	34-46
ASBURY, FRANCIS	159-161
ATTENTION,	
effect of current modes of education upon .	166-171
in case of women	170
BACON,	
on inequality	203
inductive method of, modified	191
BEEF TRUST	21
BERLIN,	
town-planning school in	117
BOSTON,	
defective communications of	178, 179
BRAIN,	
effect of habit upon	97-100
of education	143-146
pathways in	146
organization of	173, 192-195

- BRAIN,—*continued*.
 fashioning of 192-195
 affected by energy 196
 energy should have free course through the . . . 204
 BRAIN PATHS 97, 146
 BREMEN,
 government of 118
 CALIFORNIA,
 Japanese laborers in 177
 CARNEGIE 158
 CARSON,
 on the telephone 111
 CATHOLIC CHURCH,
 and divorce 33, 42-45
 CHAMPEAUX, WILLIAM OF 82
 CHRISTIANITY,
 and divorce, 33, 42-45
 CICERO,
 letters of, relating to family 40
 CITIES,
 government of American 56
 of German 117, 118
 COAL STRIKE 5-8
 COKE, DR. THOMAS 159-161
 COLONIES,
 regulation of interests of public nature . . . 7, 22
 effect upon, of Federal Constitution . . . 124-126
 CONCENTRATION,
 in classical education 141, 142
 in organized education 204, 218
 CONSERVATION OF ENERGY 105
 CONSTITUTION OF UNITED STATES,
 as affecting energy of the State . . 123-136, 176-178
 effect upon the colonies 124-126
 effect upon twentieth century 126-130
 interpretation of 130-136
 position of Supreme Court 133

CONSTITUTION OF UNITED STATES,—*continued.*

Supreme Court may overrule its own interpretation of	131
delegation of powers of Congress	132, 133
Interstate Commerce Commission	132
'due process of law'	134, 135

CONTRACT,

freedom of	26, 27
laws of Elizabeth regulating	27
impossible in Aryan family	38

CORPORATIONS,

law relating to, insufficient	61-67
negligence in case of directors	62-70

CRIMINAL LAW,

defects in	57-61, 73-77
petty crimes not effectively dealt with	73-74
severity of former	81

DARTMOUTH COLLEGE CASE	131
----------------------------------	-----

DARWIN	153
------------------	-----

DEBS' CASE	24
----------------------	----

DIALECTIC,

of schoolmen	81, 82
misdirection of	212

DIRECTORS OF CORPORATIONS,

negligence of	62-70
inefficiency of law as to	62-71
slight punishment for wrongdoing	70, 71

DISINTEGRATING TENDENCIES,

in the family	32
divorce	33-56
in Rome	33-45
defects of administration of law	56

DISSIPATION OF ENERGY,

physicists on	103-105
curves of energy	105, 106
commercial and industrial energy	106-110
human energy relatively as great as ever	112, 113

DIVORCE,

- in Aryan family 33-45
- in the United States 47-54
- statistics of 48-51
- increase of 51, 52
- in England and Wales 52

DÜSSELDORF,

- government of 118

DYNAMICS,

- educational 210-212

ECONOMICS,

- in railway management 23-28, 107-111
- mental 187-189, 197, 217, 218

EDUCATION,

- in relation to energy 136-171
- the schools 137-171
- do not create energy 140-142
- may hinder 147
- change of, from classical 148-157
- specialization in 149, 150
- effect of organized 201-203
- should be dynamic 210-212

ELECTRICITY 107-111, 112, 209

ELIZABETH, STATUTE OF,

- regulating prices 27

ENERGY,

- dissipation of 103-123
- commercial and industrial 100
- deflection of, in 18th and 19th centuries 99, 114
- human energy relatively the same 112, 113
- in public affairs 116-123
- in America 122, 123
- effect of Constitution 123, 136
- education, in its effect upon energy 136-171
- should have free course through the brain 172, 173
- meaning of energy 195-197
- shapes the brain 196

EQUALITY,	
meaning of	2
absolute, a fallacy	203
regulation of inequality the true aim	203, 204
'ERRORS,'	
of law	86, 87
EVOLUTION	104, 105

FAMILY,	
tendencies of disintegration in	32-56
the Roman	35-46
parental authority in Aryan family	34-46
in modern family.	36, 37, 47
divorce in the United States	47-54
in England and Wales	52

FEDERAL CONSTITUTION. <i>See</i> Constitution of	
United States.	
Federal Convention of 1789	125

FICTIONS,	
in law	77-84

FINESSING,	
in the courts	82-85

FORMULAE,	
for eliminating waste	185-189, 215, 217

GENERALIZATION,	
in education	149, 150

GERMAN ADMINISTRATION,	
of towns	117, 118

GERMAN CODE,	
excellence of	119

GERMAN SCHOOLS	158
--------------------------	-----

HABIT,	
psychology of.	97, 98, 101, 143

HOUSE FATHER,	
in Aryan civilization	36-46

INEQUALITY,	
regulation of	2, 99, 203, 204
law of	102
INTENTION,	
psychology of	78, 79
INTERSTATE COMMERCE COMMISSION,	
delegation of power to	132, 133
JUDICATURE ACTS,	
of England	89, 119
KNOWLEDGE,	
psychology of	78, 79
LAJES,	
in Aryan family	42
LAW,	
anti-trust	13
divorce	33-54
defective administration of	56-67
criminal	57-61
relating to business	61-67
corporations	61-67
legal finessing	82-85
lynch	87
'error' in	86, 87
LEGAL TENDER CASES	131
LOUISIANA,	
Italians in	177
LYNCH LAW,	
compared with common law	87
MEMORY,	
in education	164-166
MENTAL ECONOMY,	
in education	187-189, 197, 217, 218
MILK SUPPLY,	
interference of New York in	8-12
interference of Massachusetts in	12-20

MONOPOLY,	
state regulation of	4-31, 123
MÜNSTERBERG	168, 169
NEGLIGENCE,	
of directors of corporations	62-70
NEWSPAPERS,	
sensational	90-94
NEW YORK CENTRAL RAILROAD,	
electrification of	109
NEW YORK PENAL CODE,	
light punishments for business wrongs	70, 71
NORTHERN SECURITIES CASE	21
ORDER,	
the formula of science	185, 193
and of administration	186
PARENTAL RELATION,	
in Aryan family	34-46
in modern family	36, 37, 47
PENNSYLVANIA RAILROAD,	
electrification of	110, 111
PHYSICISTS,	
on dissipation of energy	103-105
PITTSBURG,	
energy of	136
POLICE POWER	132
PRESIDENT OF THE UNITED STATES,	
interference of, in coal strike	6, 8
PRESS,	
sensational	90-94
PRIVILEGE,	
state regulation of	4-31
effect of final success of	29-31
PRIZE-FIGHTS	91-93
PROCEDURE,	
defects in legal	88
reform of, in England	89

PSYCHOLOGY,

- legal theory that knowledge equals intention . . . 78, 79
- of habit 97, 98, 141, 143
- of attention 166-171
- mind an activity 211
- education accordingly 211

PURE FOOD LAW 71-73

RADIUM 111, 112, 209

RAILWAYS,

- as monopolies 23-26
- Debs' Case 24
- state regulation of 24-26, 28
- electrification of 109-111

RELATION OF THINGS 181-185

ROCKEFELLER 158

ROMAN FAMILY,

- divorce in 35-46

ROME,

- as an example of unity 120, 121
- modern 121

SCHOOLS,

- do not create energy 140-142, 161-164
- teaching of detached facts 153-157
- do not produce many leaders 157, 161
- German schools 158

SCIENCE,

- method of investigation by 180, 181
- order as formula of 185

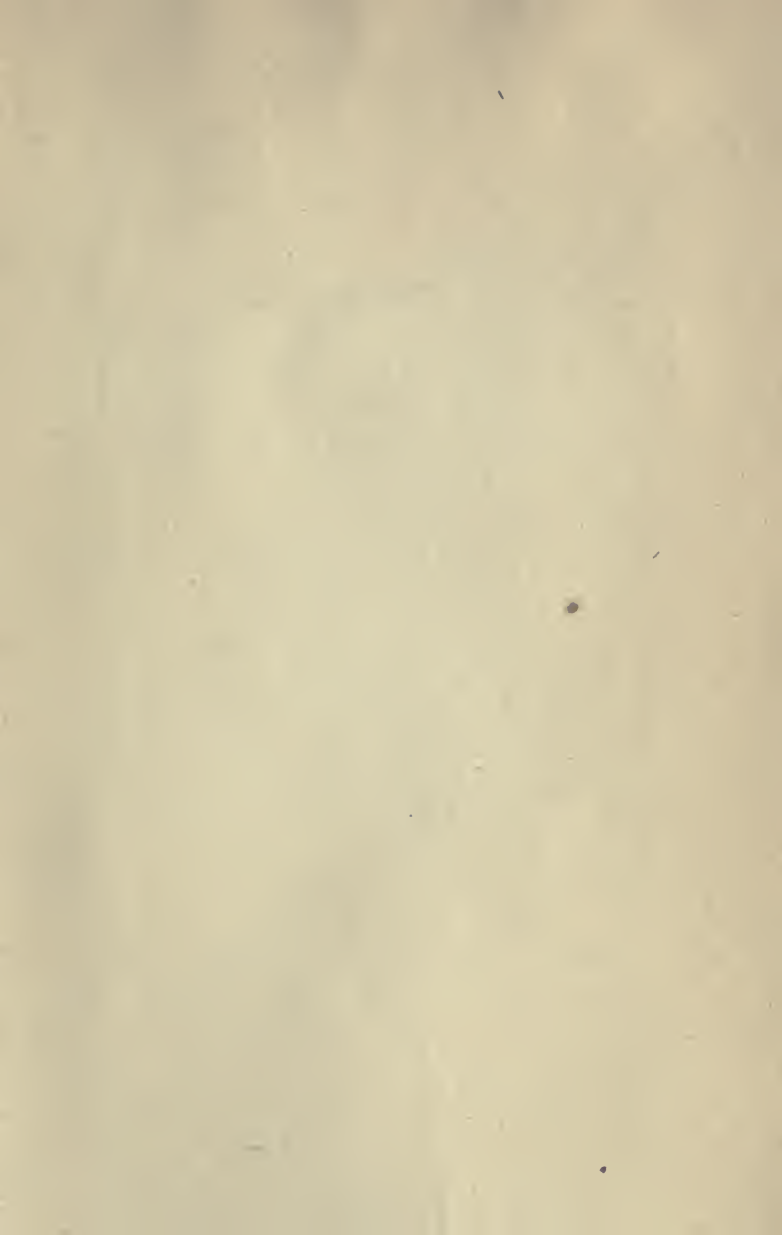
SENSATIONAL PRESS,

- as disintegrating force 90-94

SOVEREIGNTY,

- duty of sovereign to subject 1
- English 2
- American 2
- Great Trust of American 2, 3
- not faithfully kept 3
- of Aryan House Father 34-36

SPECIALIZATION,	
in education	149, 150
SUPERFICIAL VIEWS,	
of public affairs	96
habit of taking	97, 98
TELEPHONE	111
TRUST,	
of the state	2, 3 et passim
not faithfully kept	3, 96
in regard to privilege or monopoly	3-31
coal strike	5-7
success or failure of	198-201
UNITY,	
difference fading into	96
in the physical world	174, 175
in government	175
defects in the Federal government	176-178
in education generally	201-203
in legal education	214-216
order the formula of	215
creates concentration	218
and hence economy	218
VANDERBILT	158
WALLACE, H. B.	169, 182-184
WASTE,	
elimination of, in education	102, 187-189, 217, 218
WESTINGHOUSE,	
on electrification of railways	107-111
WEST POINT,	
education at	164
WOMEN TEACHERS	169-171
ZOÖLOGY,	
method of teaching in common use	153-155



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