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State and Charity

THE ENGLISH CITIZEN:

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THE STATE AND CHARITY

BY

THOMAS MACKAY

London
MACMILLAN AND CO., LIMITED
NEW YORK: THE MACMILLAN COMPANY
1898

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PREFACE

THE relation of the State to Charity might seem a subject calculated to exclude any appeal to first principles. The Author has not found it so, and his apology for the course taken has been relegated, as an afterthought, to the Preface. Charity, whether we regard it as a Christian virtue, or as the voluntary benevolent act, or as the compulsory benevolent act which is not charity, but the Poor Law, or again as a tenure of property specially recognised by English law, touches everywhere on fundamental principles of human society.

A first chapter is accordingly devoted to a consideration of the place which Charity occupies in our social economy. Its early history in this country is then sketched in broad outline. The disintegration, under the criticism of eighteenth century scepticism, of our primitive unquestioning faith in the merit of charitable donation is then described. The influence of this doubt is next traced through the public inquiry instituted by Lord Brougham, and through the legislation subsequently enacted for the control of charitable foundations. Here, as elsewhere, public opinion, after passing through a stage in which the maxim was, "Loose him and let

him go," seems at the present day to have reached a period of reaction. Public charity and, still more, public compulsory charity seem to have passed from under the cloud of censure and depreciation. The destructive criticism of Turgot and his successors has shaken to its base the cult of the pious founder. The present generation is building a new edifice on ideals of its own. Is the foundation sound, or is the reconstruction by the new democracy but the "writing large" of the yoke of the dead hand? The controversy is not soluble to-day.

At this point the narrative pauses, and, in Chapters VIII. and IX., an attempt is made to exhibit, so to speak, a section of the sphere of action covered by the charitable instincts of mankind. As a practical man, the English citizen must realise that in this country there exist, side by side, legal and voluntary agencies for relief, and he is called on to regulate this co-ordinate jurisdiction in the light of sound theory and experience.

Apart from the statement of fact contained in these two chapters, it has been the object of the Author to set out rather than decide the issues of a controversy which branches out into almost every phase of human activity. Judgment cannot be passed by this generation on constructive experiments which it has itself devised: if the Author has succeeded in suggesting the points on which the verdict must turn, he has realised the limit of his ambition.

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CHAPTER I

INTRODUCTORY

The term charity has two meanings which at the outset it may be convenient to distinguish. It means, on the one hand, the Christian virtue as described in the never-to-be-forgotten language of the apostle in his Epistle to the Corinthians. It means, on the other hand, a certain abnormal economic method for distributing the good things of this world. It is abnormal in contradistinction to the normal economic methods of distribution, which are exchange, bequest, inheritance, and gift in so far as this last proceeds spontaneously from the social ties of family and friendship.

Eleemosynary funds, created for the benefit of an impersonal class which cannot or does not avail itself of what we term the normal methods of distribution, produce economic results of the utmost importance. These, of course, must be studied apart from the motives which prompt their foundation.

It is not the purpose of this volume to speak at any length of that Christian virtue of charity which the apostle has described as the greatest of all. By the

intention, if not by the express terms of the title, we conceive ourselves to be confined to the consideration of a certain well-understood use of a portion of an English citizen's goods,—the portion, namely, which, of his own free will, either in his lifetime or at his death, he devotes to charitable purposes. The term as used by St. Paul has a wider and more spiritual reference. To this aspect of the question only a brief allusion can here be made. Obviously a man may possess charity, that supreme flower of the Christian life, without giving away a farthing of his income by way of alms, and the bestowal of all his goods to feed the poor may still leave him no better than a sounding brass and a tinkling cymbal. The charitable man, in the higher and apostolic sense of the term, will not act without duly considering all the effects of his actions. In the complicated society in which we move, this responsibility imposes on him the duty of circumspection and thought. The question for him is (1) What are the constructive influences which insure the welfare of society? and (2) How are these affected by the special subject of our inquiry, namely eleemosynary distributions of property? The answer is to be supplied by our historical and economic sense, and not by the first impulse of the heart. The charitable conscience must not only be active, it must be enlightened. Let us here briefly and as a necessary preliminary to our inquiry examine the first of these questions. The rest of the volume is devoted to an elucidation of the second question.

Primitive communism and feudalism, conditions from which progress is ever farther removing us, were conditions of *status*. Feudal England was mapped out into

manors. The population of each manor was ruled by custom, which tended to crystallise itself into law. Under this regimen there was marked out for the serf a place where his labour was due. The serf had no family, no property, no initiative or right of exchange. He was permitted rather than entitled to draw his maintenance from the soil. This subordination of service based on custom, which is the essence of feudalism, broke down before the endless diversity of human wants and the subdivision of labour which this involved. The ideal and equitable mutuality of economic exchange has never yet been reached, but the abandonment of the imperfect mutuality of feudal *status* was inevitable. We have reached a point where we readily admit that the labourer's present freedom of contract is preferable to his ancient condition of serfdom. If the labourer is not yet completely emancipated, the process is far advanced, and now that he has acquired a full right of property in his own labour and a right of exchange, he has gained the conditions which must inevitably lead to the desired result. There is, however, still a disposition to regard poverty as a *status*, for which the institution of private property and freedom of exchange do not constitute an adequate provision. Permanent charitable endowment, held on some semi-communistic tenure, not liable to be swept into the vortex of privately appropriated and exchangeable things, has therefore been thought necessary for the maintenance of poverty. We inherit this assumption, we must here insist, from an older condition of things. Maintenance provided in virtue of the *status* of poverty is a natural corollary from a system where maintenance is provided in virtue of the *status* of feudal serfdom. The last has yielded to

the solvent force of economic progress; the other remains, though its economic significance is by no means well understood.

Its historical development may be briefly outlined. The feudal organisation proper did not for long remain sufficient for the discharge of all social obligation. In its ecclesiastical aspect, the manor was the parish, and to the authorities of the parish church there was gradually transferred the unfulfilled responsibility of the manor, the care, namely, of those who for one reason or another were without a maintenance under the existing feudal polity. Eleemosynary funds, therefore, whether in the shape of collection at the Church paid by the worshippers there, or of endowments bequeathed by pious founders, or of compulsory assessments raised by the poor law, became a necessary, subsidiary, and, on the whole, a congruous part of the feudal system. This transfer of responsibility from the feudal polity which, in due grades of subordination, provided, theoretically at all events, a place and a maintenance for all, to the charity of the Church, and finally to the compulsory assessment of the Poor Law, is an incident with which all students of our social history are familiar. This last phase of the process represents a legislative attempt to preserve the expiring system of feudalism by creating an auxiliary form of *status*, the status of pauperism. The artifice did not restore feudalism, which has been replaced by a new organisation of society based on the principle of Contract or Exchange, but it has bequeathed to the civilised world the problem of pauperism.

The older organisation of labour as a *status* has thus more or less completely disappeared, but the subsidiary

element, namely, a population dependent in virtue of its poverty, on voluntary and compulsory alms-funds, has been carried on into our modern civilisation, where it remains an incongruous and embarrassing feature in a new order of things. As an idea it is abnormal and obsolete, because, in the midst of the triumphs of a system based on the idea of personal responsibility, it still clings to the conception of poverty as a caste or *status* impervious to the energising principle of economic freedom.

The assumption underlying the social legislation of a condition of *status* is that the past has determined the place where each man ought to be, and the occupation which he ought to follow; that there he must remain, and that society, acting voluntarily or through the State, must support him if he cannot or will not support himself.

The assumption underlying the conception of a condition of contract (or exchange as we should prefer to term it) is that, with the fuller recognition of the principle of private property and the right of exchange, more especially as it affects his rights over his own labour, the immobile disability of the serf (*adscriptus glebae*) is removed; he is at once fitted for a life of honourable interdependence, and the necessity for establishing and maintaining an eleemosynary basis of life for any large portion of the community has become less pressing. Further, it is assumed that considerations of the present and of the future, and not of the past, must determine the migrations and occupations of men. Under the new order, men's power of making their labour exchangeable in the market requires to be constantly diversified and improved. The labourer, in his desire to escape from the universal tendency of prices to fall,

owing to the improved organisation of industry, is obliged to acquire habits of industrial mobility. This consists in a development of his ability to avoid the congestion of a falling market, and of his readiness to convert his labour to more profitable uses. More especially will this power be exercised in directing to its proper place the labour of the young. The power of the adult workman to change his trade, though far larger than is generally supposed, more especially among skilled artisans, is of course limited, and the adjustments of industrial population to meet the fluctuations of demand are effected by the flow of the young labour into the more profitable occupations.

The demand for an exchange of services is *ex hypothesi* illimitable. If there is want of remunerative employment for labour, it is due to the fact that the mechanism of exchange is not fully developed, and this defect of organisation must be attributed to the imperfect mobility of labour, a commodity which, if properly distributed, cannot fail to be valuable. Eleemosynary endowments, whether created by law, or by the act of pious founders, distinctly tend to prolong an expiring system of immobility or *status;* and in this connection we justify the expression that they are an incongruous element in modern civilisation.

The truly charitable man in the higher sense of the term must recognise this aspect of the question. His view will be coloured by a restrained and reasonable optimism which believes in the efficacy of human endeavour when directed by just and philosophical principles. To his mind it will appear an act of unpardonable scepticism to assume that whole classes are inflicted with an inherent

incapacity for the honourable interdependence of a life of contract and exchange in a world which, if it be not the best of all possible worlds, is yet the world in which our lot is inevitably cast. A successful apology for that which must be is, he will argue, the highest form of practical wisdom.

In this view of the subject the attitude of those who seek to protect the interest of the poorer classes by talk about a "fair" or a "living wage" (mere charitable appeals to an obsolete ideal of status) is clearly reactionary. Our industrial population, under the influence of contract, has been emancipated from its trust in these delusive fleshpots of servitude. Under the new conditions every issue in the battle has been decided in favour of labour. Its reward and the purchasing power of its reward have both advanced, and must continually advance. The formula of the labourer, which has won him these victories, is not "Give me what is fair," or "what I can live upon,"—question-begging phrases which have duped him before, but "Give me that for which I contract." This is the clue out of the labyrinth. This, in spite of many reactionary manifestations which usurp and degrade the name, is the wisdom of the Modern Spirit.

A society, therefore, which is privileged or condemned (as we choose to regard it), to call itself a modern society must, if consistent with itself, approach the question of an eleemosynary distribution of property with a certain degree of prejudice. This is indeed what we find. There is an ineradicable repugnance to the receipt of alms born in the instincts of a free society. Nor does the feeling lack religious sanction.

The Jewish religion (and the fact may be taken as proof of the prophetic instinct of a devout and practical people) teaches the Jewish worshipper to pray that he may be saved from the misfortune of being a recipient of charity,[1] and more practically it enjoins on all Jewish parents the duty of seeing that each of their children learns a trade.

Let not the reader dismiss such sentiments as evidence of a sordid commercialism. A moment's circumspection, a moment's consultation of his own experience, will convince any observant man that the happiness of mankind depends very largely on the punctual discharge of a number of comparatively simple and obvious obligations, that misery and unhappiness arise from a neglect of these precautions, and that the character of misfortune so arising is not changed by all the ministrations of eleemosynary philanthropists. If philanthropy has anything to do with increasing the happiness of mankind, the truest philanthropist is he who submits himself intelligently to the discipline of life, who discharges his family obligations without creating responsibilities which have to be borne by his neighbours; who, in the other relations of life, whether he be landowner or tenant, tradesman or labourer, executes his contracts in a just and liberal spirit. Trade and commerce, and the practice of the professions, justly and successfully carried on, are centres

[1] The following has been given me by a Jewish friend as an instance in point. It is taken from a form of grace after meals. "O release us speedily from all our anxieties, and suffer us not, O Lord our God, to stand in need of the gifts of mankind nor of their loans; but let our dependence be solely on Thy hand, which is full, open, and ample, so that we may not be put to shame, nor ever confounded."

from which the contentment and happiness of many homes will be found to radiate. The truest philanthropist is he who, in the spirit of the Jewish prayer, can extend the contentment of this honourable interdependence. For this purpose the influence of the mere eleemosynary philanthropist is weak and at times even mischievous.

The Gentile mind does not always seem to dissociate itself from the past with the same emphasis. There is a disposition to refuse to find a civilising influence in the inevitable reign of industry and commerce, comprehensive terms by which we venture to designate the interdependence of a society based on the principles of property and exchange. The Jew recognises and gives express religious sanction to the idea of obeying the market. The services of the young are to be trained with a view of meeting its requirements, and the pious Jew further prays that he may not fail in these endeavours, and so become a burden on his neighbours and a shame to himself.

This recognition of the fact that, whether we like it or not, we live in an industrial era, does not, either from the economical or religious point of view, ignore or undervalue the virtue of charity. On the contrary, the economists, as well as the Christian moralists who have expressly opposed the principle of endowments, whether testamentary or rate-supported, have done so on the ground that human nature, manifesting itself through the voluntary benefactions of the living, is equal to undertake the charitable burdens which are wise and appropriate for each passing generation. This view may be unduly optimistic, but it is not open to the reproach

that it involves a narrow interpretation of human nature, or that it presents to us the so-called economic man—a being bereft of all the nobler aspirations of his kind—as the highest conception of human nature.

There is nothing in the Christian religion contrary to this teaching. The spirit of charity, of which the apostle speaks, will not set at defiance the law of modern civilisation. It will recognise that the need of applying for and receiving alms is a misfortune, which it is the highest form of charity to prevent. And in this spirit it will give and in this spirit it will withhold its alms.

The serf had no family, no property, no right to exchange. The spirit of charity, which must not exclude a just philosophical insight into human affairs, sees in the development of these three principles an organisation of life infinitely higher, both spiritually and materially, than anything that can be attained by a society based on the immobility of *status*, eked out by alms. It recognises that the population now dependent on voluntary and compulsory alms is a survival from an older condition of things, from which it is the business of a true charity to effect its emancipation. Dr. Thomas Chalmers,[1] the Christian divine who has made a more profound study of this subject than any other, confirms this view. "The knowledge of a compulsory provision"

[1] Thomas Chalmers, D.D., LL.D., Professor of Theology in the University of Edinburgh, etc. His writings on social economics, more especially *The Sufficiency of a Parochial System without a Poor Rate*, and *The Christian and Economic Polity of a Nation*, have never been superseded in their own particular line by any subsequent work. His authority is further enhanced by the successful demonstration of the justice of his views which was given in his own parish of St. John's in Glasgow between the years 1819-1837. Further allusion to this will be found on p. 140.

(*i.e.* a Poor Law), he says, "operated as a disturbing force both on the self-care and on the sympathies of Nature. Remove that provision, and these principles were restored to their proper force or original play. The body politic of our parish was put into a better condition, and all its evolutions went on more prosperously than before—not by any skilful mechanism of ours, but by the spontaneous working of Nature's previous and better mechanism." By the mechanism of Nature, Dr. Chalmers meant essentially the same thing which we have endeavoured to characterise as the mechanism of modern civilisation. "Self-care" is essentially an attribute of a man who has a right to the ownership of his own services and his own property (*i.e.* a man who has ceased to be a serf), and who has also a right to exchange. The "Sympathies of Nature" similarly proceed from an experience forbidden to the serf, namely, the responsibility of the family, and the love and affection which inevitably arise in the ordinary intercourse of life.

The argument of Dr. Chalmers, as set out in this passage, is directed against the creation of a "compulsory provision," and when we come to discuss the distinct effects of compulsory and voluntary eleemosynary funds we shall be obliged to refer to his argument again. It may, however, be noted that the strength of the argument is not weakened if we substitute the word "public" for the word compulsory. Secondly, we may observe that the terms of the passage quoted implicitly disavow skilful mechanism, in the way of raising elaborate public eleemosynary funds, and expressly state the author's conviction that the benevolence necessary for the well-being of society will be forthcoming spontaneously.

This statement of a general principle,—that the existence of eleemosynary funds is designed to meet failure and misfortune, that the higher charity will seek to limit the sphere in which necessity for them arises, that "Self-care" and the "Sympathy of Nature," the main constructive forces of modern civilisation, are on the whole sufficient for the discharge of social benevolence,—may serve, when we compare it with the actual condition of things, if for no other purpose, to remind us how very little influence a general principle has upon the practical management of affairs.

An nescis, mi fili, quantilla prudentia regitur Mundus? said the Swedish chancellor Oxenstiern to his son. The generality of mankind is but little influenced by theory. It is rare for the legislator, the pious founder, or even the yearly subscriber to charitable institutions, to consider the point of view set out by Dr. Chalmers. Such neglect has of course a cumulative force and rises at times to an intolerable climax, as in the state of the old Poor Law prior to its reform in 1834, and in the condition of many endowed charities as disclosed by a succession of Royal Commissions, and, as it would not be difficult to show, in the proceedings of some voluntarily supported charities at the present day. In such crises the practical man is willing for a brief space to revert to a consideration of first principles. This is the opportunity of the statesman. The relation of political theory to practice is well stated by Wilhelm von Humboldt.[1]

[1] In a posthumous publication written in 1791, and first issued in a complete form in 1852. *Ideen zu einem Versuch, die Gränzen der Wirksamkeit des Staats zu bestimmen.* W. von. Humboldt's *Werke*, vol. vii

The most general principle on the theory of all reform may perhaps be stated as follows :—

1. We must always apply in practice the principles derived from pure theory, but not until the whole circumstances of the case seem likely to permit the realisation of those results, which, in the absence of extraneous intervention, must invariably follow on the application of our theory.

2. In order to carry out the transition from present conditions to one which we have newly determined on, we must, as far as possible, permit each reform to proceed spontaneously from the ideas and minds of men.

. . . . .

What, then is the duty of the statesman? In every new measure, which is not part of the mere routine of business, he must adhere rigidly to pure theory, unless there are circumstances which, if engrafted with his theory, would alter or neutralise its effect. Secondly, those restrictions on freedom, which are inseparable from the present condition of things, must be allowed to remain till men show by unmistakable signs that they regard them as fetters of oppression . . . but when this is made clear, they must be at once removed. Lastly, he must labour to make men ripe for freedom. This last is at once his most important and most simple duty. For by no other means can this ripeness for freedom be advanced more effectually than by freedom itself. . . . Clearly, however, we cannot call it giving freedom when he who wears them does not feel the burden of his fetters. But no man on earth, however neglected by nature, however degraded by fortune, is enamoured of all the fetters which oppress him. We must loose them, one by one, as the desire for freedom is awakened, and at each step forward we shall quicken our progress. The awakening of these symptoms of life is beset by great difficulties. These

difficulties, however, are not in the theory but in the application, which clearly admits of no special rule, but, here as elsewhere, is the work of genius alone.

A most apposite illustration of this admirable exposition of a great truth is germane to our present inquiry. The English Poor Law—the most important instance of a compulsory eleemosynary fund—had in 1834 become an intolerable bondage. Public opinion was ripe for a reform. The English labourer, who enjoyed the benefit of the Act of 43 Elizabeth, cap. 2, and its subsequent developments, had been thereby reduced to a condition of servitude and perpetual hopeless pauperism. The problem was—how to emancipate him? The instrument proposed by the statesmen of the day was the system known as the Workhouse Test. An offer to afford relief coupled with a partial imprisonment, a condition only to be accepted by a few, was used, and successfully used, to bring about the emancipation of the whole of the labouring class from a slavery at once demoralising and complete. Philosophical economists sometimes spoke as if theory required a complete abolition of the Poor Law, and Lord Brougham, introducing the Bill in the House of Lords, seemed to adopt these views, to the great embarrassment of his colleagues. It may be difficult to resist the force of Lord Brougham's argument, but any attempt to apply it, at that time, would have been impracticable and inopportune. The practical genius of the Commissioners and of the Government devised a limited measure, which proved acceptable to the public, and so rescued a portion of our poorer population from the stagnant backwaters of pauperism.

It is true that the policy of the new Poor Law has been the subject of reactionary attack, so that we might be inclined to doubt whether society had "ripeness and capacity" for the change. Public opinion, however, in a country like England, will rarely be unanimous, and the fact that the reforms still hold will suffice to justify the wisdom of the legislature of 1834. Von Humboldt wrote at a time and in a country when even a guarded apology for freedom was obnoxious to the arbitrary power of the censorship. Even so, he insists, that, for the most part, it is public opinion which recognises and accepts the principle of great social reforms, and weaves them into the current texture of our life. The statesman and, *longo intervallo*, we may add, the historical student have three distinct responsibilities: (1) to arrive at a correct theory; (2) to watch and to explain the cause of crises occasioned by the neglect of sound theory; (3) to educate the public mind, from which, in the last resort, all reforms must proceed, for the reception of appropriate measures designed to approximate our actions to right theory.

Public opinion to-day, such is the arrogance of political empiricism, is perhaps as inaccessible to theoretical reasoning as when it was protected by an arbitrary censorship. Still, if discussion is to proceed, even though it serves no useful purpose, reference must be made to the extreme opinions of scientific thinkers. The foregoing presentation of the issues is to some extent an anticipation of the arguments of Turgot and others, which we propose to set out at their proper place. Without committing ourselves or our readers to this extreme position, the view here advanced will serve as a

starting-point and enable us the better to follow the divergencies of opinion and practice which require to be noticed in the course of our narrative. There is probably no branch of legislation where theory and practice seem more widely divergent than in the policy adopted in this country with regard to charitable endowments. We are moreover so essentially practical a people that some apology seems necessary for advancing theoretical considerations which practice has disregarded. The theorist may be wrong as well as visionary, and the practical man may be right in disregarding his arguments, but a statement and comparison of their views is essential to the elucidation of our subject, and for this purpose we shall venture to set out the extremest line of argument which has been used in the controversy.

The great German whose opinion we have quoted is less apologetic. Believing firmly in the possibility of treating politics scientifically, he expresses himself hopefully as to the ultimate judgment of public opinion: "For," he says, "no sooner has anything that is true struck deep root in human nature (even though it should be but in the heart of one man) than slowly and noiselessly it spreads its blessed influence over the surface of actual life." We may be permitted to admire, if we cannot share, his optimism.

CHAPTER II

EARLY HISTORY

ELEEMOSYNARY funds may be created in three ways: (1) By the voluntary subscriptions of the living; (2) by the bequests of pious founders; (3) by statutory assessments. In the above division the word eleemosynary is substituted for charitable to avoid an ambiguity. The terms charity and charitable are used in various senses. In the scriptural sense, charity, as already noted, has nothing directly to do with the giving of alms or the distribution of property. From this point of view it may, quite as often, be as charitable to refuse as to give alms. In English law, again, the terms charity and charitable have a special and technical meaning which is not identical with either the scriptural or the popular use of the term. In the legal sense a charity is not necessarily eleemosynary, nor, though in every case it has to do with distributions of property for some more or less public purpose, need it in any real sense of the term be beneficial to the public. The use of the term "charitable," therefore, is apt to be ambiguous. It is necessary throughout the whole discussion of this subject to be on one's guard against the fallacies arising

from this source of confusion. Charities and charitable funds are apt to arrogate to themselves the apostolic approbation bestowed on a Christian virtue, and this plausible plea for a special protection from the State has had a marked influence on our statute-book. The law has shown an exceptional favour to endowments, though as a matter of fact they have often originated in vanity or spite, and at times obviously result in the encouragement of profligacy and vice.

A consideration of the third division above suggested, —namely, funds raised by statutory assessment—may seem to lie somewhat outside the scope of this work, but these have so frequently been founded on an earlier voluntary application of eleemosynary funds, and the general policy of their administration is so closely connected with the administration of charitable funds, that some reference to them seems unavoidable.

The eleemosynary expenditure of an English citizen during his lifetime is under the control of the State no more and no less than his household expenditure. So long as the objects to be promoted by his charitable subscriptions are lawful, he is absolutely free. It is not the purpose of this volume to define a lawful object. The subscriptions paid by Mr. Rhodes to support political agitation in Johannesburg, and of others to advance the cause of independence in Crete, may in a sense be described as charitable, and though obviously they are of a character which international law will regard with some jealousy, they apparently are not illegal. Again, subscription to a society for the conversion of a section of our fellow-subjects to a religion other than their own may seem to some an infringement of social comity, but

of course it is not illegal. The establishment of philanthropic shelters for the destitute has been resented by neighbouring residents, and even by the Poor Law authorities of the Union in which they are situated, on the ground that such institutions become centres of infection, destroying the amenity of the neighbourhood, and creating by their encouragement of unsocial habits a burdensome liability for the ratepayers. Such establishments seem to be exempt from the sanitary regulations passed specially for the regulation of similar, but not identical, institutions, viz. common lodging-houses. The exemption, however, is not on the ground that they are charities, but because they are not common lodging-houses.

This section of our subject calls, therefore, for little remark. Charitable associations are governed by the same laws as apply to other associations. Occasionally a charity obtains a special Act of incorporation, and in addition is governed by the provisions of that Act. Other charitable institutions have enrolled themselves under certain sections of the Limited Liability Acts, disclaiming all intention of earning profit. Others have registered themselves under the Friendly Society Acts. These last, however, are not, for the most part, charitable. They are business associations,—Trade-Unions for the purpose of trade protection, Societies for Co-operative trading, for Insurance, for Banking, and for the granting of Loans,—and though some of these have a charitable element in their constitution, and though many of them have charitable funds at their disposal, they are in no proper sense of the term charitable, and they must be excluded from the purview of this work.

We shall discuss in our last chapters the rules of policy which ought to govern the management of charitable institutions, more particularly in relation to kindred institutions under State control, and with the above brief allusion to their legal status we pass to a branch of our subject which, if not the most important, is certainly the most intricate.

Charitable Endowments

The State, it may be said generally, has rarely attempted to interfere with the charitable actions of the living, but a much larger question is at once opened up when we come to consider the relation of the State to the charitable gifts of the dead. The right of a donor to determine the disposition of his property after his death, for limited or unlimited periods of time, is a subject of the highest practical and controversial interest. Sir H. Maine, in his *Ancient Law*, has dealt with the history of testamentary power in two most interesting chapters. Wills,—*i.e.* the instrument by which the testamentary power of testators takes effect,—find no place, we are told, in early Jewish, Hindoo, or even Greek codes of law. The devolution of property was effected by rules of inheritance prescribed rather by custom than by the will of the deceased owner. Testamentary disposition of property, an innovation on this older primitive method, was recognised first in Roman law. The right of bequest within certain limits, as developed under Roman jurisprudence, was in our own country largely overshadowed by the antagonistic forces of feudalism, under which, as Maine remarks, "property

descends compulsorily in prescribed lines of devolution." In more than one respect, and from more than one motive, the influence of the Church was exerted to modify the yoke of custom which governed inheritance. "The provision for the widow," says Maine, "was attributable to the exertions of the Church, which never relaxed its solicitude for the interest of wives surviving their husbands, winning perhaps one of the most arduous of its triumphs when, after exacting for two or three centuries an express promise from the husband at marriage to endow his wife, it at length succeeded in engrafting the principle of Dower on the customary law of all western Europe" (Maine, *Ancient Law*, p. 224). The action of the Church in this respect might be represented as imposing a restriction on the liberty of testamentary disposition, but, at the time, the result was rather a compulsory expansion designed to modify a narrow and reactionary interpretation of the customary devolution of property. The Church, moreover, had a further interest in promoting the testator's power of bequest and breaking down the compulsory system of inheritance which is essential to feudalism. The whole feudal polity was directed to prevent alienation of land and the consequent lapse of the feudal duties and service rents connected with its tenure. Accordingly, conveyances of land to religious bodies were ever jealously scrutinised by the feudal State. Statute after statute was directed to prohibit such gifts. The ingenuity of lawyers and the power of the Church succeeded in evading the law. Statutes notwithstanding, owing to the religious sanction extended to a meritorious action, the will of the dead testator was allowed to assume a

more extensive power over religious than over private endowments.

With regard to the latter, it was said that the law abhorred a perpetuity, and the maxim has gained strength with the lapse of years. At the present time the law discountenances any legal instrumeut which seeks to determine ownership for any longer period than for existing lives and twenty-one years more. With regard to religious and charitable bequests, the law has been more indulgent. The perpetuity of religious foundations received a rude shock from the high-handed action of Henry VIII. and of his son Edward VI., but the perpetuity of charitable as distinguished from religious foundations has remained in large measure undisturbed down to our own time. The confiscations of Henry VIII. did not perhaps observe very nicely the difference between a charitable and a religious foundation, but the policy of Elizabethan legislation was distinctly to encourage charitable foundations. The Act of 1597, 39 Eliz. c. 5, and of 1601, 43 Eliz. c. 4, gave new facilities for charitable endowments. These enactments should be taken in conjunction with the famous Poor Law Statute, 43 Eliz. c. 2.

It is often plausibly but incorrectly asserted that the dissolution of the monasteries rendered a Poor Law necessary. The confiscation of the religious houses, however, only affected a few localities. These establishments were, moreover, rather great inns than places devoted to the relief of distress. The philanthropic legislation of Elizabeth, as evidenced by Acts for the encouragement of charitable endowments and compulsory

assessment for the poor, seems to be part of a general policy, and though possibly it may be referred to the Legislature's desire to show that the interests of the poor, as then understood, were not to be allowed to suffer by the ecclesiastical revolution, the dissolution of the monasteries was not in itself a sufficient economic cause to warrant the universal compulsory assessment which then began.

The Elizabethan Statute of Charitable Uses, passed in 1601, was said at the time to be intended for the benefit of the poor only, but, as Lord Hobhouse has pointed out, the Act itself does not say so, and this construction has never been put on it. The objects for the promotion of which charitable bequests are thereby legalised were set out as follows: "The relief of aged, impotent, and poor people; maintenance of sick and maimed soldiers and mariners; schools of learning, free schools, and scholars in universities; repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; education and preferment of orphans; maintenance of houses of correction; marriages of poor maids; aid of young tradesmen, handicraftsmen, and persons decayed; redemption of prisoners and captives, aid of poor inhabitants in payments of fifteenths, setting out of soldiers, and other taxes." Except in the matter of the repair of the church, this definition conforms to the declared intention of its framers, as far at least as the exclusion of ecclesiastical objects is concerned; but, as Lord Hobhouse says, it embraces many objects which have only a very remote connection with the poor, and as we shall presently see, by analogy, it has been held to cover ecclesiastical objects. The Act of 1601, says Lord

Hobhouse,[1] "has found most zealous aid from Courts of Justice. They went wondrous lengths in supporting gifts and the objects which they believed to be so admirable. They applied to charitable gifts rules applicable to none other. They have held that an intention to give to charity enlarged the right of ownership, so that married women and tenants in tail, who could not give an acre to their children, could give their whole estate to charity. Moreover they held, and still hold, that a condition which one would have thought necessary for every gift, and which is necessary for every other kind of gift, viz. to designate the object with sufficient certainty, is not necessary in the case of charitable gifts. If it can be shown from the whole of a man's will that he meant his property to go to charity, to charity it goes. It does not signify that he has omitted to state in what place, by whose hands, to what objects, in what manner, the fund is to be applied; the Court of Chancery will supply all these details for him. With a statute conceived in such wide terms, and so earnestly seconded by the judiciary, no wonder if charitable foundations have spread through the land until their number has become bewildering, and the amount of their property serious" (*Dead Hand*, p. 35).

The same authority may be cited with regard to the next point in our survey on which it is necessary to dwell.

"In 1736 an Act, commonly but inaccurately called the Statute of Mortmain, was passed with a view of placing restrictions on posthumous dispositions to

[1] *The Dead Hand:* Addresses on Endowments, by Sir A. Hobhouse, Q.C., 1880.

charities. But its effect has been irregular and partial; there is much property to which it was never intended to apply, many classes of institutions are specially exempted from its operations, and on the whole its meaning has been confined narrowly by judicial decisions" (Hobhouse, p. 34).

The Act only applies to landed estate. Now it is difficult to see what principle there is in prohibiting gifts of land to charitable uses and at the same time permitting bequests of money. The Universities of Oxford and Cambridge, and the Colleges of Eton, Winchester, and Westminster, were exempted from the Act, but other educational institutions were not so privileged.

The fifth clause provides that no college shall hold more advowsons than would amount to half the number of its Fellows; the object, in Mr. Kenny's[1] opinion, was to prevent the consolidation of clerical power. This clause was repealed by the 45 George III. c. 101 (1805).

An Amendment exempting Queen Anne's Bounty was moved and rejected in the House of Lords. "The Corporation of Queen Anne's Bounty," says Mr. Kenny, "was a Metropolitan body, thoroughly devoted to the Church, and possessed of great wealth, great powers, and great privileges. Dean Prideaux, himself one of the governors of the Bounty, had pointed to it as the means of buying back the secularised tithes and undoing Henry VIII.'s spoliations. A writer (Smart, *Tables of Interest*, p. 107) whose calculations were in the hands of every man of business had warned the laity of this, and had reminded them of the dangerous fecundity of compound interest. Anne had released the Governors from

[1] C. S. Kenny on *Endowed Charities*, 1880.

the old restrictions on Mortmain, and in the thirty years of their existence they had spent between seven and eight hundred thousand pounds in buying land."

Mr. Kenny quotes some interesting notes of an undelivered speech by Lord Hardwicke in support of the Bill. He proposed, if occasion for the delivery of his speech had arisen, to dwell on the disturbance of the balance of power due to the alienation of land which was "going on perpetually increasing," and he intended to urge the Lords Spiritual "to fortify the enjoyment of what they have" by refusing to receive any more. Otherwise, he would have warned them, that their wealth was like to reach a pitch which would necessitate another spoliation like that of Henry VIII. The restriction imposed on the Corporation of Queen Anne's Bounty by this Act was removed by 43 George III. c. 107.

The circumstances which led to the passing of the Act of 1736 are discussed in a very interesting chapter in Mr. C. S. Kenny's work on *Endowed Charities*, pp. 56-70. The Statute is attributed to a reaction against the encroachment of ecclesiastical authority, but the precise history of its promotion is involved in much obscurity.

"Its object," says Mr. Kenny, "is a mystery; its very titles are misnomers. It is called the Mortmain Act, but it is not concerned with Mortmain. It is called Lord Hardwicke's Act, but he was not concerned in its introduction. Antiquarian jurists have abandoned, as an insoluble riddle, the attempt to discover the causes of its enactment. Its preamble is at variance with its provisions, and its provisions with the professions of its promoters.

"The effect of this Statute is to prevent landed property from being given to a charity either by will or by such a deed as is practically a will in disguise. Secret deeds, revocable deeds, deathbed deeds, it renders void. In other words, it provides that land, or money for the purchase of land, is not to be given to charitable uses except by means of absolute and irrevocable conveyance, executed at least a year before the death of the donor and publicly enrolled within half a year of its execution" (p. 58).

Differing from Lord Hobhouse, who seems to think the Act did not go far enough, Mr. Kenny regards it as a deplorable restriction on the charitable designs of pious founders, and, in opposition to the same authority, he thinks its provisions have been unduly strained against the principle of charitable foundations by the interpretation of the Courts.

The use of the term Mortmain in the title of this Statute covers a popular misconception which ought to be cleared up. The phrase "Dead Hand," which so expressively characterises the perpetuity attaching to posthumous dispositions of property for charitable uses by means of bequest, has reference to a modern and economic idea, and must not be identified with the earlier meaning of the term Mortmain. This Statute of 1736 begins by reciting that "whereas gifts or alienations of lands, tenements, or hereditaments in Mortmain, are prohibited or restrained by Magna Charta and divers other wholesome laws as prejudicial to and against the common utility." The objection of the older legislators to Mortmain arose from the fact that it destroyed the perpetuity of feudalism. If land was alienated in Mort-

main, in favour of an ecclesiastical or other corporation, the service tenures of feudalism were abrogated, and the fines and other profits due on succession, wardship, marriage, etc., ceased to accrue. Therefore, says Coke, it was called a dead hand, "for that a dead hand yieldeth no service." The reference, therefore, was rather to the powerlessness than to the tenacity of the dead hand. The policy of desiring to preserve intact the customary services of feudalism had ceased to operate in the eighteenth century, while the modern idea of the sterility and tenacity of the dead hand does not appear to have been in the mind of the promoters of the Act of 1736. The alleged object of their animadversion was the improvident alienations made by languishing or dying men to the disinherison of their lawful heirs, and also without doubt they were influenced by a jealousy of the Church or some other beneficiary of charitable endowments, the exact nature of which it is, at the present day, difficult to determine.

The foregoing remarks clear the ground for a consideration of the attack made by the economists, at the end of last century, on the whole principle of charitable foundations. It is from their criticisms that we derive the modern idea of the unprofitableness of the tenure of the dead hand.

CHAPTER III

TURGOT AND THE ECONOMISTS

AN entirely new turn was given to the controversy by the illustrious Turgot's work on *Fondations*, originally published in the *Encyclopédie* in 1757 (see *Œuvres de Turgot*, vol. i. p. 299, edition E. Daire, Paris, 1844). "This carefully written and sagacious piece," says Mr. J. Morley, "still remains the most masterly discussion we possess of the advantages and disadvantages of endowments. Even now, and in our own country, the most fertile and beneficent work to which a statesman of energy and courage could devote himself would be an application of the wise principles which were established in the *Encyclopédie*" (*Diderot and the Encyclopædists*, vol. i. p. 191).

The position of Turgot is interesting as marking at the outset the extreme point of the economist's objection to endowments. "*Un fondateur*," he says, "*est un homme qui veut éterniser l'effet de ses volontés.*" This, he argues, is a presumptuous and mischievous attitude. The effect expected is rarely produced. Endowments made for the relief of the poor engender pauperism. "*C'est rendre la condition du fainéant préférable à celle de l'homme qui*

travaille." If this be the result of well-intended foundations, what can we expect of those created by spite or vanity? He also insists that, however benevolent the wishes of the founder may have been, it is impossible to secure for all time a like zeal and public spirit in the administrators of his bequest. The nature of the times and the value of money, moreover, change. The need of revision is not readily acknowledged, and, when acknowledged, the opposition of vested interests is often an insuperable obstacle to reform. His general principle is summed up, "*Les hommes sont-ils puissamment intéressés au bien que vous voulez les procurer, laissez les faire; voilà le grand, l'unique principe.*" The general wants of mankind cannot with advantage be supplied from charitable endowments. These should be left to be gained by individual foresight. Extraordinary evils, such as epidemics or accidents, may fairly be met by charitable funds. His ideal may be given in the following summary of a sound economic polity. "*L'emploi libre des revenus d'une communauté, ou la contribution de tous ses membres dans le cas où le besoin serait pressant et général; une association libre et des souscriptions volontaires de quelques citoyens généreux, où l'intérêt sera moins prochain et moins universellement senti.*" The whole article is a carefully reasoned plea for securing to the present generation a full control over existing property, unimpeded by the action of previous owners. He states his point epigrammatically in these terms: "If all the men who have lived had their tombs, it would, in order to find land for cultivation, have long ago become necessary to overturn these sterile monuments, and to remove the ashes of the dead, in order to feed the living." The verdict of the philo-

sophic spirit of the age calls on us, he says, to discountenance the making of new foundations and to disabuse our minds of superstitious reverence for old foundations. In the argument of Turgot there is of course no condemnation of voluntary charity, so long as it is kept in the control of the living generation. It amounts, however, to an assertion that no mere power of revision over the object of permanent endowments is likely to be effective. The spontaneous act of the living is, he seems to argue, the best guarantee we can have for a wise exercise of the spirit of benevolence.

The influence of these opinions of Turgot, representing as they did the birth of a new revolutionary spirit of inquiry, spread far beyond the limits of his own country.

Adam Smith's attitude to the specific but typical instance of Education seems to be directly inspired by the teaching of Turgot. He asks: "Have those public endowments contributed in general to promote the end of their institution? Have they contributed to encourage the diligence and to improve the abilities of the teachers? Have they directed the course of education towards objects more useful, both to the individual and to the public, than those to which it would naturally have gone of its own accord? It should not seem very difficult to give at least a probable answer to each of these questions." The answer, which the great economist finds no difficulty in giving, is, in each case, unfavourable. Endowed teachers are, as a rule, negligent and prejudiced; the course of education in endowed schools and universities does not seem to be the most proper preparation for the business of life.

He quotes, "by far the most illustrious philosopher

and historian of the present age," his friend David Hume, who practically confirms his own objection to endowments by a cynical defence of the principle of a State Church. The wise legislator, it is argued, will study to prevent the interested diligence of an unendowed clergy. "Each ghostly practitioner," says this Machiavellian defender of Church establishments, "in order to render himself more precious and sacred in the eyes of his retainers, will inspire them with the most violent abhorrence of all other sects, and continually endeavour, by some novelty, to excite the languid devotion of his audience. No regard will be paid to truth, morals, or decency in the doctrines inculcated. Every tenet will be adopted that best suits the disorderly affections of the human frame. Customers will be drawn to each conventicle by new industry and address in practising on the passions and credulity of the populace. And in the end the civil magistrate will find that he has paid dearly for his pretended frugality, in saving a fixed establishment for the priests; and that in reality the most decent and advantageous composition which he can make with the spiritual guides is to bribe their indolence, by assigning stated salaries to their profession, and rendering it superfluous for them to be farther active, than merely to prevent their flock from straying in quest of new pastures. And in this manner ecclesiastical establishments, though commonly they arose at first from religious views, prove in the end advantageous to the political interests of society." An endowment in fact is desirable in order to render its beneficiaries indolent and contemptible.

Adam Smith's own view is substantially that of

Turgot. He is opposed to endowment and favours the defrayment of the expense of education "by those who receive the immediate benefit of such education and instruction, or by the voluntary contribution of those who think they have occasion for either the one or the other." Failing this arrangement he seems further to agree with Turgot that there is no injustice in exacting a general contribution from the whole Society.

The opinion of Turgot and Adam Smith seems to be that endowments are on the whole pernicious. The ideal of Turgot was *L'emploi libre des revenus d'une communauté*, that of Adam Smith the defrayment of the expense by the beneficiaries themselves. This corresponds to what Chalmers has termed self-care. Turgot and Smith seem, if not to favour, at least to admit the view that the imperfections and shortcomings of this system of free exchange should be met, in the last resort, by a general and compulsory "contribution." On the other hand the most celebrated of Chalmers' economic controversies was his opposition to one specific form of compulsory contribution, viz. a compulsory provision for the poor. Before considering the attack made by Chalmers and others on the opinions of Turgot and Smith, a brief reference to a contribution to the subject made by Wilhelm von Humboldt may be permitted, with a view of enlarging our survey of the philosophic opinion current at the end of last century.

In the posthumous publication already cited he states his views on the subject of national education. His opinions are clearly influenced by the revolutionary speculations of the French Encyclopedists. The motto inscribed on the title-page is taken from a treatise of

Mirabeau *l'ainé*, *Sur l'Éducation Publique*, and serves to remind us of the development given to Turgot's pronouncement against foundations by some of his most eminent countrymen. It is as follows: "Le difficile est de ne promulguer que les lois nécessaires, de rester à jamais fidèle à ce principe vraiment constitutionnel de la société, de se mettre en garde contre la fureur de gouverner, la plus funeste maladie des gouvernemens modernes." This sentiment is specially applied by Mirabeau to education in the following terms: "Dans une société bien ordonnée, au contraire tout invite les hommes à cultiver leurs moyens naturels: sans qu'on s'en mêle, l'éducation sera bonne; elle sera même d'autant meilleure, qu'on aura plus laissé à l'industrie des maîtres et à l'émulation des élèves." Von Humboldt himself seems to adopt the argument of Adam Smith, but, strangely enough, he proceeds to apply it to the precise system of State education which the English economist seemed inclined to accept as probably a necessary complement of an imperfectly organised society.

"To sum the matter up," he says, "if education is to develop human faculties generally, without seeking to impress upon them a definite civic pattern, there is no need for the interference of the State. In a free society every trade makes better progress, every art flourishes more fairly, and every science is more widely extended. Here, too, the ties of family are closer and kinder, parents are more zealous in the care of their children and, with improving circumstances, are better able to give effect to their wishes. Among free men emulation arises, and teachers educate themselves better

when their fortune is dependent on the result of their work, than when they look to the State for promotion. There will, therefore, be no lack, in such a community, of careful home education nor of those ordinary educational establishments which are useful and necessary" (W. Von Humboldt, *Werke*, vol. vii. p. 57).

The subsequent history of the controversy in this country is thus summarised by Mr. C. Kenny in his work on *Endowed Charities.* "Half a century afterwards (*i.e.* after the publication of the *Wealth of Nations*), "when the reconstructive reaction had set in, Chalmers, in a memorable volume, grappled with the arguments of Adam Smith; and Stuart Mill condemned the extreme position of Turgot as a temporary exaggeration. But Turgot's arguments have effected at least a modification in the general attitude of educated men towards endowed charities, whilst his views are still maintained in all their integrity by authorities as skilled in practical politics as Mr. Lowe, and in speculative politics as Mr. John Morley."

Some fuller details of the course of the argument may not be out of place.

In the seventeenth volume of his collected works Dr. Chalmers takes up the controversy where Adam Smith had left it, and sets out a very able defence of "Church and College establishments," more particularly with regard to the ecclesiastical and educational system of Scotland.

Chalmers, as we have already noticed, was strenuously opposed to a legal endowment for pauperism; and he based his objection on the injury done by such an institution to the moral and economic nature of society.

We have seen that Von Humboldt was of opinion that State education on moral and economic grounds was similarly to be deprecated. It is interesting, therefore, to observe the process of reasoning by which Chalmers was able to distinguish between "a National Provision for Indigence and a National Provision for Instruction."

"Some," he says, "have assimilated an endowment for the relief of indigence to an endowment for the support of literary or Christian instruction. The two cases, so far from being at all like in principle, stand in direct and diametric opposition to each other. We desiderate the latter endowment because of the languor of the intellectual or spiritual appetency; insomuch that men, left to themselves, seldom or never originate a movement towards learning. We deprecate the former endowment because, in the strength of the physical appetency, we have the surest guarantee that men will do their uttermost for good; and a public charity having this for its object, by lessening the industry and forethought that would have been otherwise put forth in the cause, both adds to the wants and detracts from the real work and virtue of the species. And, besides, there is no such strength of compassion for the sufferings of the moral or spiritual that there is for those of physical destitution. An endowment for education may be necessary to supplement the one, while an endowment for charity may do the greatest moral and economic mischief by superseding the other. Relatives and neighbours could bear to see a man ignorant or even vicious. They could not bear to see him starve" (*Sufficiency of the Parochial System*, p. 321). Elsewhere he argues that there is no effective demand for religious and

educational teaching. Though education is a real want, it is not a felt want. He is not, however, in favour of gratuitous teaching. The people of Scotland share in the expense of the education of their children, but he says, "Had it not been for the aggression upon them from without the people would have felt no impulse towards education from within, and so would have stood fast in their primæval ignorance." The offer of education, on possible terms, was made; the taste for it has grown, and, speaking for Scotland, he asserts that "it is to a great national endowment that our national character is beholden." Again purging it of its contemptuous sarcasm, he adopts the argument of Hume and says that a professor should be put above the temptation of attracting attention "by bespangling his lectureship all over with the tinsel of a gaudy sentimentalism."

The argument seems to turn on a question of fact. Is there in human nature "a languor of the intellectual or spiritual appetency"? Needless to say these philosophical questionings have had little or no effect on the practical history of endowments. Pious founders, from a great variety of motives, have continued to bequeath property to charitable uses, undeterred by the strictures of Turgot and Adam Smith, and without paying much attention to the principle of discrimination advocated by Chalmers. The principle at stake, however, has still remained a matter of controversy. Mr. J. S. Mill, in an essay originally published in the *Jurist*, and afterwards included in the first volume of *Dissertations and Discussions*, combats the extreme view laid down by Turgot. He declines to condemn endowments in the

light of a general principle. His argument is summed up very succinctly in the following passage from the *Autobiography*, p. 182 :—"The paper in the *Jurist*, which I still think a very complete discussion of the rights of the State over foundations, showed both sides of my opinions, asserting as firmly as I should have done at any time the doctrine that all endowments are national property, which the Government may and ought to control; but not, as I should once have done, condemning endowments in themselves, and proposing that they should be taken to pay off the national debt. On the contrary, I urged strenuously the importance of having a provision for education not dependent on the mere demand of the market,—that is, on the knowledge and discernment of average parents,—but calculated to establish and keep up a higher standard of instruction than is likely to be spontaneously demanded by the buyers of the article." The practical value of the suggestion that the State should control endowments and revise their objects in the light of modern requirements is now admitted by all the disputants. The objection of Turgot, Adam Smith, and Von Humboldt to endowments generally, and of Chalmers to a State endowment of pauperism, is based on the fact that the interests affected are withdrawn from the salutary influence of free exchange under which, as Von Humboldt in the passage already quoted (p. 34) has remarked, industry, morals, science, and art are more liberally encouraged, and domestic ties rendered kinder and closer. Mill's suggestion, which indeed contains the principle underlying the legislation proposed by Brougham and other reformers, was, many years after, embodied in the Act of 1853.

This Act vested in Charity Commissioners the powers of a tribunal of revision. The objection of those who share the views of Turgot and Smith will be that the revision is not sufficiently drastic and rapid, and that indeed it never can be. Each passing generation is economically and morally competent to do its own charity. Endowments and charitable distributions generally are uneconomic, and breed an uneconomic population. The economic principle, based on individual freedom of exchange, develops not only "self-care," but the fullest exercise of the charitable "sympathies of nature." This, in their view, is presumably the ideal at which we must aim.

It is a curious coincidence that two important statutes of Elizabeth, the 43 Eliz. cap. 2, the basis of the Poor Law, and the 43 Eliz. cap. 4, the Statute of charitable uses (both of them, therefore, designed to facilitate the creation of eleemosynary funds), had each of them at the beginning of the nineteenth century given rise to an administration which, by every competent observer, was deemed ruinous and demoralising. The Poor Law was reformed in 1834. In 1835 Lord Brougham made a serious attempt to create an authority able to correct the abuses of obsolete and mischievous endowments, but this last reform was delayed till 1853. The parallelism seems more than a coincidence, when we observe that precisely similar measures of reform were applied in each case. The corrupt interest of the administrators and recipients of these eleemosynary funds was too strong to admit direct legislation. Commissioners endowed with legislative authority, and in a measure independent of Parliament, were in each case

appointed. Their business was to undo as far as possible some of the mischief done by dead legislators and dead testators in providing too abundant a provision for uneconomic habits and uneconomic character.

The Poor Law Commissioners and the Charity Commissioners have each in their several departments inaugurated great and much needed reform, but the difficulty of the situation both theoretically and practically is by no means at an end. Men have by no means realised within what very narrow limits a common tenure of property can be a beneficial influence. Every claimant beneficiary of such common funds magnifies the benefit which may accrue to him from his share therein, and he is generally able to impart his prejudice to his parliamentary representative; and their united opposition is an almost insuperable obstacle to reform.

Toward the end of the sixties national education, elementary and middle class, was still a burning question of practical politics. A series of parliamentary and other inquiries kept the public attention fixed and perplexed.

In 1868 Mr. Lowe (afterwards Lord Sherbrooke) published his criticism on the report of the Commissioners appointed to inquire into middle class education. He insisted on raising again the old issue, and his pamphlet is appropriately called *Middle Class Education; Endowment or Free Trade*. The Commissioners, he complains, assume without proof that the rules of political economy do not apply to education, and it must be confessed that their arguments, which are practically identical with those of Chalmers, are based on an assumption which may be perfectly true, but

which at the same time is not susceptible of verification. That the spiritual "appetency," to use Chalmers' quaint expression, is less active than the physical appetency, is probably true, but the fact that our spiritual appetency, such as it is, has been for the most part satisfied by a recourse to endowments is, as Mr. Lowe very fairly points out, no proof that this is the only or the best method. The discipline necessary to industry was once procured by a system of slavery; it has been replaced by the far more effective discipline of voluntary contract. We may, and perhaps ought, to look for a similar development in the case of education. Endowed schools are said to preserve a high standard of education. High, of course, is a relative term; and he points out that endowments obtain the credit of all the benefit conferred on the nation by education. No one, however, thinks of the better system which they have forestalled and prevented. The assumption that parents are incapable of directing the education of their children is unwarranted. Parents are not a species of "European Chinese" bent on standing fast in their primæval ignorance. Persons recommending endowments "deliberately reject a superior machine in order to avail themselves of an inferior one." "Teaching," says Mr. Lowe, "is a trade, and not a very highly intellectual one," and, relying on the analogy of other trades, he argues that to withdraw teaching from the quickening atmosphere of free exchange will prove deteriorating both to master and parent and pupil. His present concern is "to establish the purely abstract proposition that the education of the children of parents able to pay for it is not an exception to the ordinary rules of

political economy." He declines the task of formulating measures for giving effect to this principle, but he throws out the following suggestion: "As it is admitted that the education of the children of poor parents cannot be left to the operation of free trade, it follows that the money might, without economic objection, be spent in the promotion of primary education."

To this article Mr. Mill replied in the *Fortnightly Review*, April 1869. In opposing the revolutionary and confiscatory ideas of Lord Sherbrooke he was led to adopt an attitude which has appeared to Lord Hobhouse to be unduly conservative, and unduly apologetic for an obvious and admitted abuse. By a somewhat questionable application of the doctrine laid down in the *Essay on Liberty*, Mill is disposed to sanction a wide latitude in testators for making a great variety of experiments on the body politic. An excessive power of revision vested in the public authority, the nationalisation in fact of endowments would, he says, be apt to create an undesirable uniformity. Lord Hobhouse, admitting the advantage of allowing a reasonable freedom in the testamentary disposition of property, points out that to claim perpetual powers of disposition for former owners, who are now dead, is to strain and to pervert the true principles of liberty and of property. A compulsory variety, compulsory that is in the sense that it is outside the control of the living, is just as mischievous as a compulsory uniformity. The virtue of variety, which Mill has so eloquently vindicated in his *Liberty*, is that it proceeds spontaneously from some living thought, and that consequently it is susceptible of constant and never ceasing change and adjustment.

The objection to the principle of permanency in endowments, according to Lord Hobhouse, is precisely that these two conditions are rigidly excluded. He favours, therefore, a central authority with extensive and summary powers of revision. Mill objects to this course for exactly the same reasons. The objectionable thing, in the opinion of each of these authorities, is a stereotyped rigidity. Is this tendency best counteracted by allowing a certain permanency to the eccentricities of pious founders, or by entrusting wide powers of revision, to be exercised necessarily in a more or less uniform manner, to a central authority?

Lord Hobhouse quotes, as a specimen of Mr. Mill's unwarranted optimism on the subject, the following passage:—

"We have well-nigh seen the last of the superstition which allowed a man who owned a piece of land or a sum of money 500 years ago to make a binding disposition, determining what should be done with it as long as time or the British nation should last."

Lord Hobhouse's intimate knowledge of the details of the subject enabled him to show very easily that the situation was by no means so satisfactory as Mill thought. No philosophical writer, it is perfectly true, not only at the date of Mill's article, but we might say from the time of Turgot onwards, could have been found to support the above-indicated superstition in its entirety. Philosophical theory, however, had not altered the nature of existing endowments, the action of the law courts, or the course of legislation. Lord Hobhouse is entirely successful in pointing out that in all these three departments a superstitious and often

mischievous regard is still had for the intentions of the pious founder.

While differing from Mill, Lord Hobhouse is at pains to dissociate himself from the extreme opinions of Lord Sherbrooke. He accepts, however, in a large measure the principle. "Mr. Lowe's late pamphlet," he says, "insists on considerations of the greatest importance, perhaps of more importance than any other class of considerations. And if in any practical matter we lose sight of the maxims that we must offer to people the thing they want, and not the thing they do not want; that the users of an article are, in the long run (longer or shorter according to the simplicity of the article) the only available judges of its value; and that the exertions of mankind must be stimulated by their interest, we shall come to disaster." Notwithstanding this large statement of agreement, Lord Hobhouse differs from Lord Sherbrooke on three points. The failure of endowments is due not to the principle of endowment but to founder-worship. Get rid of the dead hand and vest endowments in a public tribunal, and then the principle of endowment will have a chance of being useful. He thinks also that Lord Sherbrooke has overrated the ability and will of people to provide themselves with those advantages, which it is designed to give them by means of endowments, and also the ability of parents to choose and direct the proper system for their children's education.

The course of this controversy is not a little curious. We find Von Humboldt arguing that freedom of exchange is morally, intellectually, and materially the main condition of human progress, and laying down the

practical rules of a philosophic opportunism, by which our practice is gradually to be assimilated to this theory. To this general principle Turgot admits as an exception the necessity of a compulsory contribution where the need is general and pressing. Adam Smith agrees, and names elementary education as a case in point. Von Humboldt and Mirabeau expressly refuse to consider education as warranting exceptional treatment. Next Chalmers strongly objects to compulsory and general contribution in the case of the Poor Law, but favours the endowment of religion and education for which there is, he alleges, no natural "appetency" sufficient to call forth an appropriate supply. Hume argues in favour of religious endowment, not because it promotes efficiency, but because it makes the religious enthusiast amenable to the civil power. Lord Sherbrooke also, with regard to education, seems to take a view quite distinct from that of Chalmers. The only plea he advances for the statutory endowment of education is the inability, not the want of appetency, of the poorer classes to provide it for themselves. Then we have Lord Hobhouse and Mr. Mill both agreeing as to the necessity of making endowments useful to the present generation, but the one, Lord Hobhouse, urging that this can best be done by vesting charitable funds in a public body; the other, Mr. Mill, opposed to such extreme centralisation, on the ground that a public body is a more stereotyped and sterile form of administration than even the dead hand itself.

There is at present no acute crisis in the controversy about endowments. The subject is not within the range of practical politics. In face of the dilemma pre-

sented to it by the arguments of Lord Hobhouse and Mr. Mill, public opinion seems to have been swayed by two conflicting motives: a wish on the one hand to profit by the wisdom of the economists who have insisted on the sterile nature of the tenure of the dead hand, and on the other hand an uncomfortable feeling that it is unwise to look a gift horse too closely in the mouth. The public faith is not sufficiently robust to make society willing to forego endowments altogether, and, if the State prohibits, or ignores, or even regulates endowments, it has been apprehended that intending pious founders might be discouraged. The result of these conflicting motives, we shall presently see, has been that the Legislature has freed itself from that jealousy of endowments which gave rise to the restriction of Mortmain. As representing the owners of public endowments, it takes all it can get, but, at the same time, and at the risk of discouraging the pious founder, it every year enlarges its right to revise the objects to which such funds have been by their founders devoted.

One practical experiment has been made in meeting these difficulties, which though it has never been put forward on theoretical grounds as a solution, is still of some interest. Honorary trusts which are sometimes also secret, and which, in most instances, would not be enforceable at law, are by no means uncommon. They arise, in most instances, from a desire to evade the law or from a fear of confiscation, and are not, in any appreciable number at all events, to be attributed to the testator's doubt as to his own omniscience and wisdom, or to his desire to facilitate revision of the objects of

his endowment by the honorary trustees. Thus testators, desirous of evading existing legislation, or apprehensive of future legislation, have occasionally bequeathed property to trustees, to all appearance absolutely, but subject to a moral obligation to apply the property in question to the purposes specified by the testators. Obviously charitable bequests of this nature will be limited by the number of persons whose character is calculated to inspire testators with sufficient confidence.

"Such trusts," says Mr. Kenny, "are often employed in England at the present day. Sometimes it is for the purpose of devising land to charities which have no power to take lands under a will, the devise being made to some one who is expected to transfer the land to the charity by a deed *inter vivos.* Sometimes it is for the kindred purpose of obviating the uncertainties of life, by securing to a charity money which the devisee is to realise from the sale of lands, if the testator does not live long enough to convert them into money, and so render them capable of being bequeathed to charity. Sometimes it is for the purpose of saving the legacy duty on a bequest of money to a charity, the bequest being made to some relation so nearly akin to the testator as either to have, like his wife, to pay no legacy duty at all, or at least to have to pay it at a less rate than the 10 per cent which the charity would have to pay. In the two former cases the gift will be set aside as a fraud on public policy, if the devisee can be shown to have assented to a secret trust. But in the third case, the trust, although not enforceable by law, is not prohibited by law, and it may be avowed with impunity upon the face of the gift," and he proceeds to give a

form for this purpose as supplied in a familiar collection of Precedents. Secret trusts, for purposes that are recognised as legitimate charitable uses, are not, however, ignored by the law, if the trust has been communicated to and accepted by the donee, but in such cases the onus of proof rests on those who seek to establish the trust.

These honorary trusts are very common among the Roman Catholic community, and the confidence with which they are created is a testimony to the fidelity with which they are carried out. The Bishop of each diocese is the protector of such institutions, and the Holy See is the final judge. The general policy of the Church is to require that the intentions of testators shall be carefully observed. If an intention can no longer be carried out, the matter is referred to the Bishop, and if too difficult for his decision or beyond his powers, to the Holy See.

This result is not a little interesting. The fact that the Church regards the intentions of the founder as *sacro sanct* is, to all appearance, only accidental. In a society where there was no exaggerated respect for the wish of the pious founder the same public opinion, which in the Roman Church requires the observance, would in secular matters require the revision of testamentary dispositions in accordance with the common sense of the living generation. How far the withdrawal of legal protection from endowments would diminish their number it is impossible to say. It does not seem to have had this effect among Catholics. Nor is there any sign that the very considerable power of revision now assumed by the State has at all checked the bene-

volent intention of the pious founder. Sir H. Longley, the chief Charity Commissioner, in giving evidence to the Select Committee of 1894, declares that he does not think "anything would prevent people from founding charities" (Q. 726).

Mr. Kenny, in his often quoted work, cites a speech of Mr. Charles Buller, in which he deplored the decay of beneficence at a date previous to the Act of 1853. Writing in 1839, Earl Stanhope also has remarked "that in the last hundred years we have seen but little cause to dread the excess of posthumous charity." "Yet," continues Mr. Kenny, "only a generation has since elapsed and the munificence of the Elizabethan age has already revived"; and, in illustration, he cites the gift of Mr. Peabody to the Housing of the Working Classes, of Mr. Baird to the Kirk of Scotland, of Mr. Holloway for Women's Education, of Mr. Gardner for the Blind; and he goes on to point out that it is in the province of education, where the power of revision is more boldly and peremptorily enforced, that the number and amount of new endowments have been most striking. "The gift of Sir Joseph Whitworth, the science college of Sir Josiah Mason at Birmingham, the college of Mr. Mark Firth at Sheffield, the college at Nottingham, are familiar instances."

The Forty-second Report of the Charity Commissioners gives some interesting particulars on this head. During the twenty years, 1875-1894 inclusive, charitable gifts of sums of £1000 and upwards, subject to the provisions of the Charitable Trust Acts, have been made to the amount of over 8 millions. No estimate is given of the sums under £1000, but they are without doubt in

the aggregate of considerable importance. A long list is given from which we cite those which reach the dignity of six figures.

For Educational Purposes.—Beyer's Charity for Professorships of Science at Owens College, Manchester, £100,000; Holloway College*, £300,000; George Hudson's Charity for Orphan Boys and Girls at Sunderland, £169,335; Richard Berridge's Charity for Advancement of Education in Economic and Sanitary Science, £200,000.

For Medical Relief (including Hospitals) and Nursing.—Wm. King's Charity for St. George's Hospital, London, £100,000; the Hospital Convalescent Home,* founded in 1890 for patients from London hospitals when discharged as convalescents, £141,000; Lady Forester's Charity for a Cottage Hospital at Wenlock and a Convalescent Home elsewhere, £400,000.

Distribution to the Poor.—Spencer's Charity for Aged and Infirm Poor Women, and for Almshouses at Coventry, £108,000.

For Miscellaneous Purposes.—William Dudley's Charity* at Birmingham for Young and Aged Tradesmen, and for charitable institutions for the relief of human suffering, £100,000; Gardner's Trust for the Blind, £300,000; Ogilvie's Charity* for Convalescent Homes, Hospitals, Poor Governesses, etc., £148,000; Guinness' Charity* for Housing of the Working Classes in and near London, £200,000; Guesdon's Charity for philanthropic and charitable purposes, £299,000. In addition to these and other large sums of money a list is set out of public parks and recreation grounds given to the public by the

* Those marked with an asterisk were founded by deed, the others by will.

generosity of wealthy donors. "Indeed," say the Commissioners, "there is reason to think that the latter half of the nineteenth century will stand second, in respect of the greatness and variety of the charities created within its duration, to no other half-century since the Reformation. And as to one particular branch of educational endowments, namely, that for the advancement of the secondary and superior education of girls and women, it may be anticipated that future generations will look back to the period immediately following upon the Schools Inquiry Commission and the consequent passing of the Endowed Schools Acts, as marking an epoch in the creation and application of endowments for that branch of education similar to that which is marked for the education of boys and men by the Reformation." This eulogy on the Reformation period, it may be remarked in passing, must be reconsidered in the light of Mr. A. F. Leach's recent work on *English Schools at the Reformation* (Constable, 1896). He has conclusively shown that these boasted foundations dated from a much earlier period, and that the reconstruction which then took place was conducted on terms by no means liberal to the interests of education. Mr. Leach, indeed, represents Edward VI. to have been a spoiler, and by no means a founder of schools.

Some interesting information with regard to the views of Sir Josiah Mason, a typical instance of a modern pious founder, on the power of revision is given in a pamphlet on endowments written by Mr. (now Sir) J. G. Fitch, who at one time acted as an assistant commissioner under the Endowed Schools Act. In 1869 Mr. Fitch, when engaged in a special parliamentary

inquiry with regard to education in Birmingham, met Sir Josiah Mason, who told him something of his intention to endow the great scientific college which now bears his name. "I said to him then, 'Are you not afraid of leaving such large bequests to posterity when you see the modern tendency to overhaul and revise the wills of founders?' He replied, 'That is the very reason why I feel such confidence in leaving these sums of money; if it were not that public authorities are likely to be vigilant, and to correct any mistake that I make, and to take care to keep these institutions in full working efficiency, I should feel very much hesitation in leaving such large sums to my successors.'" In the deed of foundation Sir Josiah Mason went beyond the public policy as embodied in Acts of Parliament, in his desire to secure for his endowment the benefit of wise and vigilant revision, and he accordingly reserved to himself during his lifetime, and after his death to the trustees at the expiration of every thirteen years, the right to revise the foundation in every particular, except the general object of the foundation, namely, the improvement of scientific instruction. If all endowments had been conceived and successfully carried out in this liberal spirit, the maxim *timeo . . . et dona ferentes*, which Mr. Fitch has inscribed on the cover of his treatise, would have been much less appropriate than it is now. It is fair, however, to notice that many of the foundations, reconstructed by charters under Edward and Elizabeth, contained clauses for the revision of such parts of the schemes as were not fundamental. The responsibility for the "obsolescence and caducity" which almost invariably appears sooner or

later in endowed institutions must in such cases rest on their successors, and not on the pious founders themselves.

In the earlier part of this chapter we summed up the effect of Turgot's general condemnation of endowments in the maxim, that eleemosynary funds, if they are not to be a standing menace to the economic organisation of society, must be liable to the prompt revision of the living generation, a condition only to be secured by vesting all property in the living and allowing them to make their own charitable appropriations. We shall presently quote an extreme expression of that view, wherein it is argued that the distribution of property or educational advantages by any means other than by the purely economic instrument of exchange, is an uneducating influence, in so far as it prevents the progress of society in that economic discipline which is the indispensable condition of its well-being. This irreconcileable position is not turned by the enlightened policy of Sir Josiah Mason's deed of trust, but the argument of those who base their objection to endowments on the admitted tendency of endowments to what is called "obsolescence and caducity" will find many of their difficulties removed.

CHAPTER IV

THE STAGE OF INQUIRY

In following the economic controversy in the last chapter we have somewhat anticipated the course of events. We may now take up the narrative where we left it at the end of the third chapter. The Act of 1736 was of a very stringent character. As we have noted, the universities were from the first exempted from its provisions, as were also Queen Anne's Bounty by subsequent legislation, and various hospitals by special Acts of their own. By the 6 and 7 Vict. c. 37, sect. 22, a further exception was made on behalf of the Ecclesiastical Commissioners, who became thereby entitled to receive bequests of land for the "endowment or augmentation of the income" of clergymen of the Church of England.

Various committees, appointed to inquire into the question of endowments, have reported in favour of relaxation in the provisions of the Act in respect of one or two special interests, but no effective change in the law took place till the Act of 1891. The Act of 1736 applied to gifts of "lands, tenements, or hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements,

or hereditaments." This has been construed, either by reason of the obvious intention of the words or, as Mr. Kenny and other authorities affirm, by the disfavour shown by the law courts to charitable foundations, to cover certain forms of property which in other connections are considered to be purely personal property. Mr. Kenny instances mortgages on turnpike tolls, loans secured upon local rates, growing crops, and the unpaid purchase money of an estate sold by the testator. Generally the line of distinction was so artificial that the utmost uncertainty prevailed. The Mortmain committees of 1844 and 1852 protested against the state of the law. The Popular Education Commission of 1860 asked for a relaxation in favour of educational foundations. Not only did the Act prohibit a bequest of land, but a bequest of money "to be laid out or disposed of in the purchase of any lands" was not valid for charitable uses. Thus Mr. George Moore, a philanthropist whose life has been written by Mr. S. Smiles, put aside £15,000 to buy the ground for a convalescent home. He died before his intention could be carried out, and a clause in his will, inserted with the object of giving effect to this intention, became void. One other interpretation of the Act, which is supposed to bear hardly on charitable legatees, may be cited. A charitable legacy, charged along with other bequests on a testator's whole estate, could not, of course, be paid out of real estate, but the charitable legatee was further deprived of the right of calling on the other legatees to "marshall assets," that is to say, he could not oblige other legatees to satisfy their claims from the real estate even though

this was sufficient to meet their demand, and so leave the personality, otherwise insufficient for that purpose, free to discharge the charitable legacy. In view of this disability the Popular Education Commission of 1860 recommended the repeal "of the rule of equity, that a charitable legatee shall be deprived of the privilege given to every other legatee of taking his legacy from the fund legally subject to it."

To sum the matter up, public policy opposed a number of obstacles to the acquisition of real estate by charitable corporations. The restriction, in earlier times, when land was the sole form of investment was of great importance. The motive for this restriction had varied; at one time it had been the unwillingness of the feudal authority to allow the abrogation of service tenure and the other rights of feudal superiors; at another it was a desire to prevent the disherison of lawful heirs by dying and languishing men, though why this prohibition was confined to real estate is not very clear; and lastly, and probably this motive was in later times the strongest of all, it was a fear of the growing power and wealth of great corporations. The restrictions, from whatever motive they arose, were not altogether effectual. Notwithstanding all these obstacles, a vast amount of property kept accumulating in public trusts of one form or another.

The great increase of personal property due to the growth of industry and manufactures rendered the restrictions of Mortmain less important, and by the Act of 1891, the illogical attempt to abridge the owner's power of conveyance and testament over one particular class of property and not over another has been finally

abandoned. The right of an owner to devote his property in perpetuity to public uses seems now to be tacitly conceded. The nation, however, reserves to itself the right to vary the precise form of public use to which the fund is to be applied. The interest of the controversy has, accordingly, shifted to a discussion of the rules that should govern the nation's power of revising the objects to be promoted by its charitable property.

This question the nation has determined is to be decided not by an appeal to theory, but by a close examination of the facts and history of the case. As already pointed out, the country was compelled, at the beginning of this century, to give attention to the problem of public relief by the maladministration resulting from the Elizabethan Poor Law. Closely connected with this was the general question of charitable endowments. A compulsory assessment is obviously a creation of the Legislature. Less obviously, but still not less truly, the perpetuity of a charitable endowment is an artificial obstacle, imposed by the Legislature, on that disintegration of common or public tenure of property which everywhere has been the mark of an advancing civilisation. The common field system of cultivation gave way before improved methods of agriculture, and observers like Arthur Young have put on record some account of the great gain to the country from the change. The common property which the labourer had in the poor-rate had, obviously even to the least intelligent, proved a source of demoralisation which had brought the country to the brink of ruin. Similarly, and though the matter was on a smaller scale, it began to be argued that the common property which men had in endow-

ments was largely prejudicial to the public weal. According to the practice of the time the nature of endowments was made the subject of parliamentary and other inquiry.

The first attempt to make the nation aware of the extent and character of its charitable endowments was that authorised by an Act of 1786. This Act is one of a series designed to oblige the local authorities to give information as to the amount of money spent from all sources on the relief of the poor. It and several kindred enactments are due to the initiative of Mr. Gilbert, who is best known as the author of a famous Poor Law Act, 22 George III. c. 33, commonly known as Gilbert's Act. The 16 George III. c. 40 and the 26 George III. c. 56 required the overseers of the poor to fill up certain schedules, distributed for that purpose, showing the amount raised and expended on the legal relief of the poor. The 26 George III. c. 58, 1786, after reciting that it is "proper that the Legislature, who are directing inquiries into the state and condition of the poor, should be informed of the several charitable donations for the use and benefit of poor persons," directed the ministers and churchwardens to make return "of all charitable donations for the benefit of poor persons in the several parishes and places within that part of Great Britain called England."

Of this inquiry Sir F. Eden remarks, vol. i. 373, "The Committee appointed to consider the returns made by the ministers and churchwardens to these questions having caused the produce of the different charities (as far as they could be collected from the returns, which were in many instances very defective

and obscure) to be cast up in each county, found the annual amount of the produce of land and money appropriated to charitable uses to be as follows:—

Money in England	£46,173	9	9			
„ Wales .	2,070	0	8			
				£48,243	10	5
Land in England	£206,301	8	8			
„ Wales .	4,166	0	2			
				210,467	8	10
Making together a total of				£258,710	19	3

"The Committee added that they had reason to believe that very considerable further sums would appear to have been given for similar purposes, whenever proper means could be found for completing their discoveries by extending the inquiry to corporations, companies, and societies, as well as feoffees, trustees, and other persons."

Lord Brougham's Commissioners, who worked from 1818 to 1837, in the summary published in 1842, state the annual amount of endowed charities for the relief of the poor to be £1,209,395 : 12 : 8, besides £312,545 : 5 : 4 for educational purposes, making a total of £1,521,940 : 18s. The discrepancy between this amount and the amount obtained by the Gilbert inquiry is more than can be explained by the lapse of time.

The Committee which considered the Gilbert returns remark that many of these charitable donations had been lost, and others were in danger of being lost, by reason of the carelessness and inattention of those who administer them. In 1812 the 52 George III. c. 102

was passed, with a view of preventing the lapse and disappearance of these public funds. It required that particulars of the income, capital, objects, and trustees of every existing endowed charity, and the names of the persons holding the instrument of endowment, should be registered with the Clerk of the Peace for the county within six months of the passing of the Act, and made a similar provision for all future charities. A copy of each registration was also to be enrolled in Chancery. No penalty, however, was enacted in case of failure to observe these provisions, and no public authority was made responsible for enforcing registration. The Act therefore proved a dead letter.

The serious business of enumerating and bringing to the light our national endowments began in 1818, and is chiefly due to the zeal of Lord Brougham. In 1818 Mr. Brougham, as he then was, published a letter addressed to Sir Samuel Romilly which attracted great attention, and went through twelve editions in six months. The letter is mainly a defence of the proceedings of a Committee appointed in 1816 to inquire into educational foundations. Much adverse criticism had been excited by the determination of Mr. Brougham and the Committee to go into the history of foundations which had been appropriated by the richer classes. "Inquiry," he maliciously remarks, "into foundations of which the Fellows of St. John's, Cambridge, were the visitors was fully yet fairly conducted. Yet the outcry raised by calling the head of a house before a Parliamentary Committee was inconceivable, and it was much increased by the reverend person himself happening to burst into tears upon a very simple and very civil

question being addressed to him in very respectful terms." His justification of the course pursued may be given in his own words.

"The Committee," he says, "was severely reproved for pushing our inquiries into establishments destined, it was said, for the education of the upper classes, while our instructions confined us to schools for the lower orders. Unfortunately, we no sooner looked into any of those institutions than we found that this objection to our jurisdiction rested upon the very abuses which we were investigating, and not upon the real nature of the foundations; for as often as we examined any establishment, the production of the charter or statutes proved that it was originally intended for the education of the poor. 'One free school for the instruction, teaching, maintenance, and education of *poor children* and scholars,' says the charter of the Hospital and Free Grammar School in the Charter House. '*Pauperes* et *indigentes* scholares,' say the statutes of Winchester College. 'Unum Collegium perpetuum *Pauperum* et *Indigentium* scholarium Cantabrigiae et quoddam aliud collegium perpetuum *Aliorum Pauperum et Indigentium* scholarium Etoniae,' say the statutes which founded King's College, Cambridge, and Eton College; and they further require the scholars to take a solemn oath that they have not five marcs (£3 : 6s.) a year to spend. . . . There is no doubt that some other institutions, as St. Paul's School and St. Saviour's, Southwark, were intended for the rich; the former, by manifest implication, was founded for them only; the latter, by the express terms of the foundation, was meant for rich and poor indifferently, but in the original statutes of the great

schools and colleges, so far as we examined them, there was to be found no provision except for the poor."

The object which he has at heart in raising this agitation is that the Estate of the Poor may be "as it were accurately surveyed and restored to its rightful owners, or rather rescued from the hands which have no title to hold it, and placed at the disposal of the Legislature, the supreme power in the State, to be managed in the way most beneficial to those for whose use it was destined; . . . and, among other advantages, this would result that charitable persons, confiding in the secure application of their benefactions, might be encouraged to new acts of liberality. . . . The will of the donor, which ought to be closely pursued, may often be better complied with by a deviation from the letter of his directions." In proof of this allegation he gives certain instances. Thus Hemsworth Hospital in Yorkshire was endowed with about £70 per annum for the support of twenty poor persons above sixty years of age. The funds had in 1818 risen to £2000 per annum, and he pointed out that it was probably no part of the founder's desire to bestow annuities of £100 per annum on twenty poor persons. Similarly, he thought, if the pious founder of Leeds Grammar School could have foreseen the development of Leeds from a small village to a great commercial town, he would not have excluded the teaching of arithmetic and modern languages. Funds bequeathed to promote the obsolete and dangerous practice of inoculation for the small-pox should, in justice to the presumed sanity of the testator, be turned to extend the practice of vaccination.

The general question raised by Brougham as to the

appropriation of endowments by a class which is not the poorest class is a fruitful source of controversy. We may at our discretion so interpret the facts as to draw therefrom an endless variety of morals.

The apologist for that which is may, without fear of contradiction, point out that the poor scholar of antiquity is not of the class which we now denominate "the poor," and he may maintain that there has been no diversion of the benefits from one class to another. All ranks of society have grown richer, and the middle class student of to-day is the legitimate successor of the poor scholar of mediæval times. Further, he will point out that the endowments of our great public schools and universities by no means give a gratuitous education to their scholars and students. Their effect has been rather to give to this portion of our national education a certain historical continuity and magnificence as represented by "the antiquity and regality" of great foundations, "the old and awful cloisters," and the stately buildings which, though they have raised education in the public estimation, have by no means rendered it cheap. The poorer classes, moreover; he will say with Chalmers, have shown and indeed can show no great appetency for educational advantages of a literary character—so much so, indeed, that far from pressing forward to enjoy such endowments as were available, it has been deemed necessary, in the present generation, to pass stringent enactments obliging the poor to send their children to school gratuitously, a course of conduct so repugnant to many that an army of inspectors is necessary to see it carried out. Moreover, he may fairly insist that the poor man's child is not

excluded, if in competitive examination he can show himself the best qualified to profit by the advantages of the endowment. Competitive examination, it will be said, tells hardly against the children of the poor, for educational prizes fall to the children of those who can afford to prepare them for the contest. This may be true, but it must not be forgotten that competition was originally adopted in the interests of the poor, and with a view of preventing these endowments being jobbed by persons in authority. The remedy, which has been carried to great lengths, is possibly more injurious to sound education and the interest of the public service than the disease it was intended to cure; still the *onus* lies on those who complain to suggest a plan for the distribution of these benefits which shall be at once equitable and practicable. Again, he will point out that there are many human institutions admitted to be excellent, which nevertheless have antecedents in their history not altogether creditable. The history of property in earlier times is too often a mere record of confiscation and injustice, yet no serious person would on that account seek to overturn this institution, if in other respects he is of opinion that it is salutary and necessary. So with regard to those higher educational endowments, he will demand that the question shall be decided by reference to the good and valuable work which they are doing. In this connection Charles Lamb's defence of the bounty of Christ's Hospital will naturally occur to the reader.

"Here," he says, "neither on the one hand are the youth lifted up above their family, which we must suppose liberal though reduced; nor, on the other hand, are they liable to be depressed below its level by the

mean habits and sentiments which a common charity school generates. It is, in a word, an institution to keep those who have yet held up their heads in the world from sinking . . . to separate a child from his family for a season, in order to render him back hereafter with feelings and habits more congenial to it than he could have attained by remaining at home in the bosom of it." This characteristic of the school, he justly says, could not have been preserved if the benefits had been confined to the very lowest of the people, and the attainments which it procured for its scholars would have been useless to the children of the labouring class.

Again, there is the view presented to us by Brougham, in which the history of endowments is regarded as an instance of the way in which the weak are oppressed by the strong. In 1818 it was necessary to combat the asserted right of the few to oppress the many, but to-day the oppressions committed by the few, consisting in the appropriation of unconsidered trifles like endowments, will appear unimportant to the impartial economist when compared with the statutory levies made by modern majorities upon minorities, which far exceed in number the "many" of the earlier period. The ethical considerations which govern the State distribution of voluntarily bestowed endowments have become merged in a much larger question. The truth is that the idea of common property, involved in endowments and in the right of taxation, is not easily kept undefiled by the injustice of the strong.

Again, a spectator of a different turn of mind will see nothing in the incident but an illustration of the inevitable fate which always overtakes such attempts to

hold property on a common tenure. Public trustees administering a public endowment must either, as in Lord Brougham's complaint, allow themselves to be influenced by interested motives, and so permit the endowment to be appropriated by persons who are powerful enough to get it into their possession, or, on the other hand, they may conscientiously require that the beneficiaries must qualify by displaying a real or apparent poverty. Such an observer may decline to trouble himself with the task of deciding between these two evils; he will rather feel confirmed in his opinion, that even in regard to such impalpable property as educational advantages, the best and most equitable method of distribution is personal appropriation and exchange.

As to the usefulness of endowments generally, Brougham leans to the view of Turgot and of Smith, more especially with regard to charities which supply maintenance to the poor.

"I take it," he says, "to be a principle which will admit of no contradiction, that the existence of any permanent fund for the support of the poor—the appropriation of any revenue, however raised, which must peremptorily be expended in maintaining such as have no other means of subsistence—has, upon the whole, a direct tendency to increase their numbers. It produces this effect in two ways: by discouraging industry, foresight, economy—the great preventives of poverty; and by encouraging improvident marriages, the great source of paupers." To this class of funds, directly productive of pauperism, belong almshouses, hospital schools, where children are supported as well as educated, doles

to mendicants and poor families, regular donations of religious houses, tithes, or rather the portion of them formerly devoted to the poor, and finally, and above all, the Poor Law itself.

He clenches his argument by the following quotation from Tacitus: "Languescet industria, intendetur socordia, si nullus ex se metus aut spes, et securi omnes aliena subsidia expectabunt, sibi ignavi, nobis graves."

He adopts Turgot's idea that endowments may be useful for extraordinary occasions, but, best of all, they should be devoted to education, the founding of savings banks, and kindred purposes. At the same time, he is not prepared to say that such a limitation ought to be attempted in regard to existing charitable funds. Mr. Kenny summarises Brougham's work in the following terms: "By a long series of parliamentary efforts he obtained the appointment of four successive Commissions of Inquiry, which, in the emphatic words of Earl Russell, 'destroyed many flagrant abuses, detected the perversion of a large amount of charitable funds, and led the way to those further inquiries and those remedial measures of which we have seen the commencement and the progress, but of which the consummation is yet to come.' His Commissions were at work from 1818 to 1837, and the result of their investigations—the longest in duration and the most prolific in facts, of all parliamentary inquiries—is embodied in thirty-eight folio volumes, consisting of some twenty-five thousand pages, describing twenty-eight thousand eight hundred and eighty charities (with an aggregate income of twelve hundred thousand pounds), and compiled at a cost of more than a quarter of a million. During the forty years that have since

elapsed these reports have been used as the basis of all official dealings with the endowed charities; and they have stood the test. During the last few months the present Charity Commissioners (in their Report of 1879) have pronounced them 'a record of laborious and accurate investigation which has seldom if ever been equalled in the discharge of similar functions, and of which our daily experience enables us to speak with confidence.'"

The Charity Commissioners in 1876 completed their own *General Digest of Endowed Charities* after fifteen years' work. Out of the 14,859 civic parishes in England and Wales, 11,859 or 79·82 per cent had charitable endowments. The gross annual income of these charities amounted to—

From land	£1,558,251
From personality	640,213
	£2,198,464

The large preponderance of real over personal estate is noteworthy as evidence of the fact, that until comparatively modern times land was the only form of investment. This is curiously illustrated by the regulations which were occasionally enjoined on the trustees for dealing with their surplus funds. For instance, in one old educational foundation, viz. Shrewsbury, the surplus was to be put in an iron box with four locks and taken out from time to time and spent in building.

The following classification is given of the different objects to which these charitable funds were devoted, with the income of each class :—

Education	£666,863
Apprenticing and advancement .	87,865
Clergy and lecturers . . .	90,843
Church purposes	112,895
Nonconformist churches and ministers	38,832
Parochial and other public uses .	66,875
Almshouses and pensions . .	552,119
Medical hospitals, and dispensaries .	199,140
Distribution among the poor . .	383,029
	£2,198,461

This total did not include land held in hand for use as premises, the property of the universities and their colleges, Eton and Winchester, Cathedral foundations, Friendly Societies and Benefit Societies, nor institutions wholly maintained by voluntary subscriptions.

This elaborate Digest is now in course of being superseded by a series of publications issued by the Commissioners and the County Councils of England and Wales, under the Charity Inquiries (Expenses) Act 1892. The nature and scope of this work is given in the Forty-second Report of the Charity Commissioners, par. 13. It is there stated that "in every case of an inquiry by us under this Act into the charities of a county, a return is presented by us to the House of Commons upon every parish in that county, whether found to contain charities subject to our jurisdiction or not; that the return for each parish is issued separately, and comprises, besides the report made to us by our assistant commissioner in the result of his local inquiries, a complete reprint of the Report of the former Commission of Inquiry (commonly known as Lord Brougham's Commission), and of

the digest presented by us to Parliament between the years 1860 and 1875; that eventually the whole of the separate parish reports are collected and issued together as a county volume or volumes; and that there is, at the same time, issued a new edition of the above-mentioned Digest, revised in accordance with the results of the inquiries."

CHAPTER V

THE EFFECT OF THE INQUIRY ON PUBLIC OPINION

Our purpose at this stage is to record the impression made on the public mind by these disclosures as to the charitable property of the nation.

The first impression seems to have been largely unfavourable. The view expressed by Lord Brougham in 1818 is repeated in 1834 with all the emphasis derived from the high authority of the Poor Law Commissioners. They sum up the situation in their famous Report of 1834 as follows:—

Closely connected with the relief provided by the Poor Laws is the relief provided by charitable foundations. As to the administration and effect of those charities which are distributed among the classes who are also receivers of the poor-rate much evidence is scattered throughout our Appendix, and it has forced on us the conviction that, as now administered, such charities are often wasted and often mischievous. In many instances being distributed on the same principles as the rates of the worst managed parishes, they are only less pernicious than the abuse in the application of the poor-rates because they are visibly limited in amount. In some cases they have a quality of evil peculiar to themselves. The majority of them are distributed among the poor inhabitants of particular parishes or towns. The

places intended to be favoured by large charities attract, therefore, an undue proportion of the poorer classes, who, in the hope of trifling benefits to be obtained without labour, often linger on in spots most unfavourable to the exercise of their industry. Poverty is thus not only collected, but created in the very neighbourhood whence the benevolent founders have manifestly expected to make it disappear.

No serious authority has ever attempted to dispute the justice of this verdict. Even in Mr. J. S. Mill's article on endowments, part of the reconstructive argument, as it is termed by Mr. Courtney, the defence of the class of charitable foundations referred to in the above quotation is definitely abandoned. Thus Mr. Mill remarks: "But there are also employments of money which have so mischievous an effect, that they would most likely be prohibited if it could be done without improper interference with individual liberty;[1] and such an application of funds, though the State may be obliged to tolerate, it may be right that it should abstain from enforcing on the mandate of the owner after his death. Of this sort are most of the so-called doles—indiscriminate distributions of money among the poor of a particular place or class, the effect of which may be to pauperise and demoralise a whole neighbourhood."

In their Fortieth Report (*i.e.* for the year 1892) the Charity Commissioners remark: "It is not within our present purpose to insist upon the mischief and waste

[1] It seems a strange perversion of the doctrine of individual liberty to seek to invest with a perpetual authority the wishes of a man who is dead, and who, if mundane affairs still interest him, is bitterly bewailing his powerlessness to undo the injury which this perverse reasoning still permits him to inflict on his descendants.

incident to this form of eleemosynary gift. This topic has been the subject of frequent observation in our previous Reports, and at the present day it has come to be one upon which, in the abstract at least, public opinion is all but unanimous. It will be sufficient here to note some indications of authoritative opinion adverse to the distribution of doles." The Report goes on to instance the act of the Legislature in showing a special disfavour to charities of this class in section 30 of the Endowed Schools Act, 1869, in section 4 of the Allotment Extension Act, 1882,[1] and to the judgment of Sir G. Jessel, Master of the Rolls, in the case of the Campden Charities. Enlightened public opinion, and even Acts of the Legislature, have thus acknowledged the mischievous character of such appropriations of money. No intelligent man would now sit down in cold blood and deliberately devote any portion of his fortune to such mischievous and wasteful purposes; but the Report of the Commissioners goes on to show that there is still a large amount of property, in the control of the dead hand, religiously applied in an admittedly wasteful and injurious manner. In their Fortieth Report they repeat a complaint which they had made seventeen years earlier in their Twenty-third Report: "By virtue of the powers conferred upon them by the Endowed Schools Act, 1869, the Commissioners can, with the consent of the trustees, apply endowments of this kind (that is, dole charities) to the purposes of education; but with this exception they have at present no powers which would enable them to meet the wishes of any locality for a more

[1] These Acts permit the diversion of dole charities to educational and allotment purposes.

advantageous disposal of funds so often found to be useless and even mischievous in their present mode of application. Great advantage would often arise from the exercise of such powers, by means of which, without so complete a change in the objects of the trust as is involved in the devotion of the funds wholly to education, useless or mischievous dole charities might be utilised for objects conducive to the material and moral well-being of the poor." The Commissioners go on to relate that they have used "every effort, within the narrower limits of our powers, of establishing *cy-près* schemes for the administration of dole charities to promote the change which we have thus recommended. These proceedings have, as was to be expected, been encountered at the outset by frequent opposition. . . . In the course, however, of the last fifteen years a system of pensions has been thus established in many parishes throughout the country, and a substantial addition has been made to the funds directly available for the relief of the aged poor." In 1874 there was a sum of £532,000 applicable to the support of almshouses and pensioners, and a further sum of £384,000 to the distribution of gifts among the poor. This last amount had, by 1892, to some extent been made applicable to "improved purposes for the benefit of the poor, and among others the establishment of pensions." The Report then goes on to make "mention of some typical cases showing that dole charities still exist in their most mischievous and wasteful form, and that a wide field is still open for further exertions in the direction in which beneficial progress has already been made.

"In three parishes in one of the midland counties it

is found that a distribution of doles is carried on to an extent which seems to exclude discrimination in the application of funds, while the amount given to each recipient, even where not infinitesimal, is such as to be practically valueless.

"In parish A, out of a population of 1090,[1] 499 persons (including 224 children) received in 1891 relief at an average rate of 2s. per head, the highest amount given to an individual being 2s. 6d.

"In parish B, out of a population of 2250, relief was in 1892 granted, directly or indirectly, in respect of no less than 1084 persons, including, as in the former case, children. The average receipt per head was 7¼d.

"In parish C, out of a population of 3055, doles were received in 1891 by 1207 persons, of whom 729 were children receiving 1d. apiece. Three heads of families received 1s. 1d. or 1s. each; but with this exception 10d. was the maximum amount awarded to a family. The average amount received per head was somewhat less than 2¾d. In this case it is understood, though we have not yet received the official accounts for 1892, that in that year 1500 persons shared in these doles, receiving, therefore, an average amount of 2d. each.

"It thus appears that in these three parishes relief is received by or in respect of a number of persons which bears to the whole population the following proportions respectively, viz. :—

In parish A, 49 per cent.[1]
" " B, 48 per cent.
" " C, 39 per cent (or in 1892, 50 per cent).

[1] It is so printed in the Report. The argument is not affected by the fact that for the figures given the percentage is about 46.

"The striking contrast which these figures present between the value to the poor, on the one hand, of relief scattered broadcast and indiscriminately, and, on the other hand, of the concentration of the same funds upon selected cases of need caused by sickness or old age, is one which any comments would only tend to weaken." (Fortieth Report Charity Commissioners.)

This reasoning and this treatment of dole charities, namely, their conversion from small, useless gratuities to many into fairly substantial allowances to a few, seems to be in accordance with the average public opinion of the time. When we come later on to consider the general question of the part to be played by charitable institutions in the general scheme of public relief, we shall see that the action thus taken has an important bearing. At the same time, it is only fair to state there still appears to be a certain undercurrent of dissatisfaction, of which the following protest on the part of Mr. Jesse Collings is a fairly representative specimen.

In giving evidence in 1894 to the Select Committee on the Charity Commission Mr. Jesse Collings expressed very strongly his dissent from this general condemnation of doles. His argument may be briefly summarised. Since the State has undertaken to provide gratuitous elementary education, the educational schemes promoted by the Charity Commission have of necessity been directed to provide secondary education, which the poorest class only uses in very exceptional cases. The devotion of dole charities to secondary education, therefore, involves the transference of the endowment from the very poor to the less poor. The premises are not

disputed, what follows is more questionable. "I am well aware," he (Q. 3708) goes on, "that there is a great deal spoken about the demoralisation of those doles, but doles exist largely with the wealthier classes. Every scheme of the Charity Commissioners almost is a scheme for the creation of doles for the wealthier classes; and I do not see why we should harp on the demoralisation caused by doles for the poorer classes, and say nothing about any possible demoralisation that might result from doles enjoyed by the wealthier classes." The object of the Charity Commissioners, he says, is "to devote all funds that they can lay hands on, within the limits of the Statutes by which they are governed, to middle and higher class education . . . by means of these endowments which are so largely, in my opinion, the property of the poorer classes." For himself he is frankly in favour of doles (Q. 3706): "In the majority of cases the benefits are very useful." The charities of St. Thomas' Day, a Birmingham charity of which Mr. Collings has personal knowledge, "are dispensed in what you may call an annual treat, which is regarded by the labourer as a Christmas treat, and I believe that they give an enjoyment to the poor people which they value and which can be obtained in no other way."

Without adopting Mr. Collings' panegyric on doles, some persons may still agree with him in thinking that a yearly Christmas junket is a less formidable attack on the economic character of society than a system of adequate pensions, or an eleemosynary system of secondary education. With regard to the possibility of turning a well-considered system of charitable pensions to useful purposes in connection with the reform of our public

administration of relief, the reader is referred to a subsequent chapter in this book (see p. 134). For a defence of educational endowments we must fall back on Chalmers' distinction between a national provision for indigence and a national provision for instruction. This is the view favoured by Fawcett and the more practical economists. Mr. Collings, as we understand him, deliberately rejects this distinction. If a dole in aid of maintenance is an attack on the economic character of our social relations, so also is a dole in aid of education, and both are equally to be condemned. This, of course, is not Mr. Collings' view. Doles, he consistently argues, are good everywhere, and the attempt of the Commissioners to hold them good in one place and bad in another is illogical.

His complaint, therefore, is that the appropriation of these good things has not been and is not equitably carried out. The process now going on with regard to secondary education is, says Mr. Collings, "the process which we are very apt to condemn in olden times with regard to some large foundations, Eton and Harrow, and other old schools, where the poor we know have been squeezed out from any part in the foundations." At the present time, he adds, fresh great schools are being built from which the poorer classes are excluded.

Mr. Collings does not explain how elementary education, the sole form of secular education for which the poorer classes have any use, can be made more than gratuitous; nor, if we may assume that persons, wishing to receive gratuitous or aided secondary education, should be required to show that they are the persons best able to profit by it, would it be easy to suggest any plan other

than competitive examination as at present pursued by which such persons may be selected. Rightly or wrongly, public opinion has been too indolent and too distrustful of authority to favour any other plan of patronage. The alternative, which is presumably suggested by Mr. Collings, is that the beneficiaries should be selected in virtue of their real or feigned poverty. The whole of Mr. Collings' argument, therefore, rests on the assumption that such a method of selection can be made without an offence against public policy. On this point the whole weight of authority is against him. If, as he has argued, the distinction drawn by Chalmers as between educational and maintenance endowments cannot be upheld, there can be no doubt that the condemnation passed upon doles by every competent authority will prevail against Mr. Collings' opinion, and will be extended to all charitable endowments.

Mr. Collings' legislative remedy seems to be an abolition of the authority of the Charity Commission and the introduction of some more popular form of control. The condemnation of dole charities which, as we have shown, has been universal among the more coherent critics of the system would be reversed, Mr. Collings appears to think, if the decision were remitted to popular suffrage. In this he is probably correct. All the worst abuses of the old Poor Law, all the worst abuses of the present Poor Law have been due to the inability of a local majority to refrain, in this matter of public relief, from urging the responsible authority to spend the public money lavishly and without system. Local authority has always been thoroughly amenable to most ignorant popular prejudice on the subject of Poor

Law relief, and, as history has abundantly proved, no change from the old Poor Law would have been possible if the central authority of the Commissioners and Local Government Board had not been employed to override the mischievous proclivities of local opinion. If these public eleemosynary funds are allowed to exist at all, there can be no doubt that unless their administration is governed by some form of central control, the desire of administrators to be popular, and the natural desire of "the poor" to have their share in anything of the nature of a common fund, will prove invincible influences in support of a system of doles. This may be a good thing, as Mr. Collings apparently thinks, or it may be a bad thing, as Lord Brougham and the Charity Commissioners have argued, but the fact seems to admit of very little doubt. The very limited nature of the Poor Law reform which the Local Government Board and its predecessors have been able to enforce on the local authorities, and the inconsistency which Mr. Collings points out in the attitude of the Commissioners, may perhaps show that the control of a central body is neither a very powerful nor a rigidly logical influence for reform. If those who condemn doles and universal facilities for pauperism are correct, it is obvious that central control, though able to mitigate the evil to some extent, and though, perhaps, under the circumstances, the only practicable policy of reform, is by no means a very powerful bulwark against the strength of popular prejudice when left face to face with the temptation of a public eleemosynary fund, whether this be derived from endowments or taxation. The error, if error it is, may rather be attributed to the constitution, or may we not say, the very existence of

such funds. When once the fund is advertised for distribution, neither the firmness of administrators nor the moderation of "the poor" can prevent the pernicious consequences which Lord Brougham has deplored.

The question of popular control has not been neglected by the Commissioners. Without seeking to evade the onerous responsibility of formulating schemes which shall be innocuous and yet acceptable to the locality, they have ever been eager to enlist the popular elective principle for purposes of local administration. In their Fortieth Report, dealing with the year 1892, the Commissioners remark on the objectionable manner in which the private appointment or co-optation of trustees of charities has occasionally worked. The practice is used to cover abuses which greater publicity might be effectual in removing. They go on to relate their own efforts to enforce greater publicity by making their approval of the appointment of new trustees conditional on a due regard to this principle. "This first step," they continue, "towards bringing public opinion to bear upon the constitution of bodies of trustees administering charitable, and therefore public trusts, led, by an almost necessary sequence, to a demand for the appointment of trustees on a representative principle." To give effect to this proposal the Commissioners had been in the habit of conferring a power of appointing trustees upon representative local bodies, *e.g.* Vestries, Local Boards, Town Councils, Boards of Guardians. The policy thus inaugurated under the powers of the Commissioners received further legislative sanction by the Local Government Act, 1894. Considerable powers in the way of appointing trustees of parochial and non-ecclesiastical charities have

the public conscience was not ripe, we may be permitted to point out that even the compromise advocated by Chalmers, and pursued with such remarkable success in Scotland, has been deliberately abandoned. The scanty endowment of the old parish school was, as Chalmers put it, a whet on the "appetency" of the people. It placed a supply of education within their reach, not, however, for nothing. It did not absolve the parents from all economic effort, nor did it make the schoolmaster altogether independent of the beneficiaries. The endowment was merely a subsidy to a system which in other respects was economic. In a Scottish countryside the question of education was, therefore, the subject of keen debate at every cottage fireside. It gave an intellectual interest in life not only to the children but to their parents. The system had its imperfections, but notwithstanding its poverty, and, according to modern ideas, the insufficiency of its equipment, it succeeded in reaching a point to which the more elaborate and costly system of England has never yet attained. It made education a living influence in the lives of all the poorer classes of Scotland both old and young. The English system assumes that there is and can be no "appetency" on the part of the parents. They are compelled to feed their children intellectually. From this compulsion there logically followed, so it was argued, financial irresponsibility. The teacher does not look to the appreciation of the parent for his advancement, but endeavours to make himself a political influence. The whole burden of every improvement in education is thrown on an unwilling contributor, the rate or taxpayer. Instead of being a consolidating and elevating

influence, education is becoming a centre of a bitter class-feud, and what the end will be is not yet clear.

There is no more popular example of an eleemosynary distribution of advantages than this public provision of education. In selecting it for the application of the more extreme arguments used by the opponents of endowment, we are well aware that our presentment of their case will appear paradoxically remote from the practice of the time. The view, however, is not to be ignored. We have already cited illustrious names of some who have expressed themselves ready to accept the horn of the dilemma put forward by Mr. Collings as unthinkable, and there still are those who have harped and will continue to harp on the demoralisation wrought in our social system by endowments, whether these be devoted to the rich or the poor.

The influence of endowment on education, they argue, is exerted on the character of the article offered, on the distributors, and on the beneficiaries. Where the education given is merely assisted on the lines recommended by the authority of Chalmers and Fawcett, its influence will appear in the character of the article offered rather than in the direct economic derangement which it causes. Roger Ascham, some one has said, could to-day take the sixth form at Eton. Allowing for the exaggeration inseparable from an epigram, no one can deny that educational endowments have warped, for good or for evil, our judgment as to the requisite course of study for an English schoolboy. This may be a good thing or a bad thing; this is not the place to decide that controversy. It must be noted, however, that there are those whose sturdy conservatism rejoices in the com-

parative immobility of our educational methods, and who regard the classical education given in our great public schools and universities as a mental gymnastic, which leaves little or nothing to be desired. An extreme statement of the opposite view is contained in the following criticism of Mr. H. Spencer :—

That which our school courses leave almost entirely out, we thus find to be that which most nearly concerns the business of life. Our industries would cease were it not for the information which men begin to acquire, as they best may, after their education is said to be finished. . . . Had there been no teaching but such as goes on in our public schools, England would now be what it was in feudal times. That increasing acquaintance with the laws of phenomena which has through successive ages enabled us to subjugate Nature to our needs, and in these days gives the common labourer comforts which a few centuries ago kings could not purchase, is scarcely in any degree owed to the appointed means of instructing our youth. The vital knowledge, that by which we have grown as a nation to what we are and now underlies our whole existence, is a knowledge that has got itself taught in nooks and corners, while the ordained agencies for teaching have been mumbling little else but dead formulas (*Education*, p. 25).

And again—

And here we see most distinctly the vice of our educational system. It neglects the plants for the sake of the flower. . . . Accomplishments, the fine arts, *belles-lettres*, and all those things which, as we say, constitute the efflorescence of civilisation, should be wholly subordinate to that instruction and discipline in which civilisation rests. *As they occupy the leisure part of life, so should they occupy the leisure part of education* (p. 39).

We have no desire to weigh the value of these contrasted opinions. Our point here is to show how a system of education, which may be admirable in itself, is inevitably made suspect when its details have the appearance of being settled not entirely of free choice, but to some extent by the tradition and authority of the dead hand.

Pursuing the same line of thought, a critic of existing arrangements will argue that education which is entirely gratuitous must exert a wider economic result. Thus, in another passage, Mr. Spencer, commenting on our system of national education, a system which since he wrote has become entirely gratuitous, has dwelt on the fact that education is life-long. Civilised society requires, for its own sake and for that of succeeding generations, that its members shall be trained from youth upwards in habits of economic competency. To this end gratuitous education is not favourable.

> The strong affection for progeny becomes in her (Nature's) hands the agent of a double culture, serving at once to fashion parent and child into the needful form.

If education is removed from the control of this influence this double culture is lost, and he sums the matter up:—

> Hence a Government can educate in one direction only by uneducating in another—can confer knowledge only at the expense of character (*Social Statics*, p. 175).

The issue at stake is a very plain one. In the view of the theorist which we are here endeavouring to set out, the economic competency of society is of a para-

mount importance. If this is allowed to develop itself automatically, the blessings of education and leisure and enlightenment will be attained on a basis at once sure and progressive. These same benefits, admittedly among the choicest gifts to human kind, if founded on an eleemosynary as distinct from an economic basis, carry with them an element of decay. The press, the pulpit, and the opinion of the educated man generally, have combined to exalt the value of education. No one denies its value, but the question still remains. Is it of equal value with competent economic character, and must its organisation be pushed forward regardless of the basic principle of modern civilisation? It is a high controversy which has been solved without regard to the doubt here indicated. It remains to be seen whether a permanent and satisfactory solution can be reached so long as this principle is ignored. It is a problem which can be answered only by the future, "that enlightened and upright judge who always, alas! arrives too late."

In following the course of this inquiry into the charitable property of the nation, and in quoting the contradictory opinions arrived at by distinguished men, we have at least made it clear that it is not possible to formulate any universally acceptable theory of charitable endowments. At the same time it may not be difficult to indicate the pivot on which the whole controversy turns.

We may disregard, for our present purpose, the socialist view, which, in its advocacy of "nationalisation" and "municipalisation" of wealth, is really urging the adoption of a universal system of endowment, and we may confine ourselves to the more practical issue,

which seeks to determine what useful purpose can be served by endowments in a society where, for the most part, wealth is distributed by means of the principle of private property and exchange. Here, it will be found that the limited experiments in endowment, which have been admitted into an organisation constructed on a totally different basis, have given satisfaction and proved workable in proportion to the degree in which the benefits so distributed are susceptible of a full and common enjoyment. Thus doles or scraps of maintenance, before they can be enjoyed, require to be personally appropriated in the most absolute manner. They lend themselves to no sort of common enjoyment. Accordingly, doles have met with an overwhelming verdict of condemnation. On the other hand, parks, museums, works of art, cathedrals, and similar things, are capable of giving a common enjoyment to all without involving any act of appropriation, and with equal unanimity they have always been excepted when any general condemnation of endowments has been proposed. These cases represent the two extremes, and it will be found that in the more educated popular opinion, as well as in the light of economic theory, endowments will be deemed valuable or the reverse in the proportion in which they correspond to one or other of these extremes.

Civilised society has universally adopted the principle of private property, presumably, among other reasons, because it has proved to be the most convenient way of avoiding a perpetually recurring scramble. How far is the institution of endowments an effective substitute in this respect? How far does it allow the benefits which it controls to be enjoyed fully and under condi-

tions that are honourable and equitable? Let us take the ordinary dole charity as an instance. In some cases the trustees of such funds have regarded them as their own, as in the case of a mayor of Sandwich who presented one of the town pensions to his young wife. Or they distribute them to those who can bring most interest to bear. Or they conscientiously regard them as a trust to be distributed to those who can succeed in proving themselves failures. It is questionable whether the just or the unjust steward is the most mischievous element. The result has in every way been pronounced unsatisfactory by practical men, not in the light of any theory, but from a sober consideration of the nature of the case. The plan avoids, perhaps, the brutality of a physical scramble, but it is calculated to encourage, in both donor and recipient, some of the most odious characteristics which human nature can harbour. Further, these unsatisfactory distributions prevent the poor ceasing to be poor by the only means open to them, *i.e.* by acquiring property on the tenures recognised in the society to which they belong.

Midway between a cathedral or a public park which practically all men may enjoy, and a dole charity which can only be enjoyed under humiliating and harmful conditions, there is a considerable tract of debateable country. As we have seen, the most varied accounts have been given of the value of educational endowments. Even those who, like Mr. Lowe, regard endowments as an infringement of the salutary rule of free trade, are willing to make exception in favour of the buildings of our great schools and universities. For the rest the differences of opinion are irreconcileable, both

as to the effect of perpetuity of endowment on the character of the education provided, and also as to the balance of loss or gain involved in distributing educational advantages on an eleemosynary as opposed to an economic basis. One party suggests that the education given is antiquated and useless, and that the conditions under which it is appropriated are "uneducating" in another direction; on both of these grounds, therefore, the benefit cannot be fully enjoyed. Others find that the advantage of disseminating education on any terms amply compensates for the economic dislocation which the system may occasion, and some will even welcome the dislocation as freeing education from certain undesirable, sordid, and utilitarian considerations. The reader, in fact, must decide for himself whether education partakes more of the character of a cathedral or of a dole. In this unsatisfactory manner we must leave this interesting but apparently insoluble problem.

Such has been the history of this controversy. We may now consider in more detail the actual course of legislation, and see how far, if at all, it reflects the above described phases of public opinion.

CHAPTER VI

THE LAW OF CHARITABLE TRUSTS

FOLLOWING the definition of a charity given in the preamble of 43 Eliz. c. 4 (see page 23), and the interpretation given to that Statute by the Courts, we may say that every public trust is a charitable trust, and that the two terms are synonymous. The Statute of Elizabeth has been repealed by the Mortmain and Charitable Uses Act, 1888, but the above cited preamble is incorporated and still remains the official definition of a charity. A valid charity confers on its trustees a right to hold its property in perpetuity, a form of tenure which in other respects the law is said to abhor. In Tudor's *Charitable Trusts*, the principal text-book on the law, the following convenient division has been made of the objects of charitable trusts :—

The Relief of Poverty and Distress.—Gifts to the poor indefinitely, to the poor of a particular parish, to the inmates of a workhouse, emigrants to particular colonies, poor pious persons of the Methodist Society in a particular place, have been held to be charitable. Similarly bequests for the following purposes have been recognised as coming within that definition : for the widows

and children of seamen at a particular port, for twenty aged widows and spinsters, for letting land to the poor at a low rent, for the encouragement of good servants, for deserving literary men who have not been successful. On the other hand, a gift for building labourers' cottages on a particular estate, and a gift to the children of the tenantry of the donor, have been declared void, there being nothing to show that they were intended for the benefit of poor persons. Gifts to institutions for the relief of poverty and distress are charitable if they do not infringe the Mortmain provisions. Gifts to "poor relations" generally seem to be charitable, but not necessarily so when there is an intention expressed to give an immediate legacy to particular relations, even though the individuals are left to the selection of the executors.

Advancement of Learning.—The persons to be educated need not be poor to render the gift valid as a charity.

Advancement of Religion.—Gifts for the advancement of religion are by analogy held to be within the Statute of Elizabeth. The validity of a certain class of such bequests is more fully established by the Church Building Act, 43 George III. c. 108. The object, however, must be for the benefit of the parish generally. A trust to maintain the testator's tomb is not charitable, though, of course, within the limits allowed by the rule against perpetuity such a trust may be valid. Gifts for providing clergymen and augmenting benefices are valid, but the gift must be general in terms; thus a legacy to each of ten poor clergymen of the Church of England, to be selected by a specified person, was held not to be charitable. Gifts to religious institutions are similarly

limited. Thus bequests for the saying of masses for the soul of the testator are not charitable, as they are "only for the benefit or solace of the testator or his family." Gifts for the advancement of religious doctrines are charitable so long as they are not subversive of all religion and morality. A bequest for distributing the works and propagating the religious opinions of Joanna Southcote was held charitable, but a legacy for the best essay on the Sufficiency of Natural Theology treated as a Science was held void as subversive of Christianity.

General Public Purposes.—Gifts for public and general purposes, though beneficial to rich as well as poor, are held charitable within the intent of the Statute. Thus a bequest towards payment of the national debt would be held a good charitable bequest. Under this head comes every variety of public institution. The only excepted cases are when the gift is not intended to benefit the public, but is for purposes of a private character. Bequests of an altogether indefinite and general character are liable to be declared void by reason of their uncertainty, *e.g.* a gift "for purchasing such books as may have a tendency to promote the interests of virtue and religion and the interests of mankind," not unnaturally was regarded as of this character. Certain gifts have been held contrary to public policy, *e.g.* a legacy for purchasing the discharge of persons committed to prison for non-payment of fines under the game laws, also a bequest for the restoration of the Jews to Jerusalem was declared void as being "inconsistent with our amicable relations with the Sublime Porte."

In earlier times many bequests which had for their object "the propagation of the rites of a religion not

tolerated by the law," were held to be void as being for "superstitious uses." There is no Statute making superstitious uses void generally, but the king was supposed by common law to be obliged, "and for that purpose entrusted and empowered to see that nothing be done to the disherison of the Crown or the propagation of a false religion." Confiscatory Acts were, however, passed in the time of Henry VIII. and his son Edward VI., and up to comparatively modern times Protestant Dissenters, Roman Catholics, and Jews laboured under disabilities in this respect. The Toleration Act of 1688 relieved the Protestant Dissenter. By the Catholic Charities Act, 1832, Roman Catholics were put on the same footing as Protestant Dissenters. The 9 and 10 Victoria, c. 59, removed the disabilities of the Jews. Nonconformist bodies generally have the right to have the trusts relating to their charities regulated by the Court, and they are subject to the jurisdiction of the Charity Commissioners. A bequest by a Jew to have prayers recited on the anniversary of his death was held valid by Sir S. Romilly, apparently on the ground that the prayers were at large—there was "no praying for the soul of any one" in particular. Bequests for prayers for the soul of the testator are still invalid as superstitious in England and Wales, but valid in Ireland. A gift for propagating the doctrine of Papal supremacy would probably be held void. In cases where a bequest fails on the ground of superstition, if a general charitable intention has been shown, the bequest is applied *cy-près* to valid charitable objects by the Crown under the sign manual.

Restrictions on the Devise of Realty.—We have described

in general terms the objects which in the eye of the law are held to be charitable. As already indicated, the principal restriction on the devise of property to charitable uses is that originally contained in the Statutes of Mortmain properly so called, and in the so-called Mortmain Act, 1736. The provisions of the Mortmain Acts proper were revised, consolidated, and re-enacted in Part I. of the Mortmain and Charitable Uses Act, 1888, and the provisions of the Act of 1736 in Part II. of the same Act. The first part forbade the acquisition of land or an interest in land by corporations of any kind except under a license. Licenses of exemption from this provision have been secured by statute, charter, and custom. These exemptions are confirmed by the new Act. The second part of the Act of 1888 forbids the assurance of land and of personal estate to be laid out in the purchase of land, to charitable purposes, unless the following requirements are complied with:—The assurance must take effect at once without any power of revocation for the benefit of the assurer. If the assurance is in good faith, and for a full and valuable consideration, the consideration may consist of a rent. If there be no full and valuable consideration, the assurance must be made twelve months before the death of the assurer. The assurance or a separate instrument declaring the charitable uses must be enrolled within six months of execution. These conditions obviously could not be fulfilled by any instrument of the nature of a will, and the result was, as the law then stood, that property of the kinds to which the Statute applied could not be given by will to charitable purposes.

This position is entirely changed by the Mortmain and

Charitable Uses Act, 1891. The new Act preserves the Mortmain principle, but applies it in a restricted manner to land and to land only. There may be some reason against allowing the ownership of land to rest in corporations, but it is difficult to see why what is called "impure personalty," *e.g.* personalty derived from a sale of land, should be held to differ from money at the testator's bank. The Select Committee of 1852 proposed that the restriction should be extended to every class of property. This, as we have seen, was in accordance with the general prejudice against endowments, created by the economists and by the disclosure of abuses by Lord Brougham's Commission. The pendulum of opinion has now swung to the opposite extreme. "Such a proposal," says Mr. Bristowe, "would find few advocates now." "In framing the new Act," says the same authority, "the Legislature has acted upon the principle that as regards any property, except actual land, the power of disposition in favour of charity ought to be wholly unrestricted" (*Treatise on the Mortmain and Charitable Uses Act*, 1891). The section, therefore, which defines land expressly excludes "money secured on land or other personal estate arising from or connected with land." Generally it may be said that the conditions, *e.g.* enrolment, required by the Statute of 1888, and unrepealed by that of 1891, are not oppressive either in the case of purchases or in the case of gifts by instrument *inter vivos.* The condition voiding an assurance, if the donor dies within the limited period, may seem vexatious, but it is pointed out that the uncertainty may be provided against by use of the enlarged power conferred by the new Act on the

testator. By section 5 it is enacted that "land may be assured by will to or for the benefit of any charitable use."

The effect of this is that, both in the case of a devise of land and in the case of a bequest of personal estate to be laid out in the purchase of land, the gift is valid. The law then proceeds "to enact a peremptory direction for the sale of the land within a limited period, and in the case of a bequest of personalty subject to a direction to lay it out in the purchase of land, to strike that direction out of the will."

The Charity Commissioners are charged with the duty of seeing that such sale of land is carried out in a reasonable space of time. Land required for a site or the legitimate uses of a charity may, with the sanction of the Court or the Charity Commissioners, be retained.

The Act of 1891 carries on the exemptions of previous legislation. Some of these are complete, others partial. Assurances for a public park, elementary school, or public museum are specially exempt by Part III. of the Act of 1888, as well as assurances for the Universities of Oxford and Cambridge, London, Durham, and Victoria, the Colleges of Eton, Winchester, and Westminster. Again, by a Statute of 42 George III. c. 116, sect. 50, money may be devised by will to redeem the land tax on land settled to charitable uses. By the Church Building Act, 43 George III. c. 108, land may be devised for the purpose specified. By 6 and 7 Vict. c. 37, the Ecclesiastical Commissioners are exempted. By other Statutes, recreation grounds, the department of science and art, cemeteries, new bishoprics, working-class dwellings, are exempt from the disabilities

contained in the Act of 1888, and the exemption in most respects has been made more complete by the general effect of the Act of 1891. The following particular institutions are similarly privileged, Queen Anne's Bounty, Greenwich Hospital, Seamen's Hospital, Bath Infirmary, University College Hospital, St. George's, Westminster, and Middlesex Hospitals, the British Museum. The following have been released from the liability of avoidance in the case of deeds of gift, where the donor dies within the limited time: colleges, school boards, science, literature, and fine art institutions, churchyards, places of worship sites. The conveyance for a workhouse or asylum is exempted from the necessity of enrolment. Generally it may be said that the disabilities imposed on charitable foundations in respect of the acquisition of property have been so largely reduced by the Act of 1891, that the value and importance of such exemption is no longer of much moment.

Personalty.—The restrictions imposed on the bequest of realty to charitable uses have thus in large measure been removed. The bequest of personalty has always been favoured by the law. The indefinite terms in which a bequest is given has not been allowed to render it void; if the testator has shown a general charitable intention the Court will direct how the fund is to be used. Thus gifts for a hospital for lepers in England, for the redemption of British slaves in Turkey and Barbary, and other similar impossible or obsolete uses, have not been allowed to fail. On the other hand, a bequest to be distributed in "private charity" has been held to be for an object which is not charitable within

the meaning of the Statute of Elizabeth. The charities recognised must be public in their nature.

The privilege thus accorded to charitable trusts is the right of creating a perpetuity, and so long as the object is a charitable one according to the definition of the Statute, the law is not inclined to render such bequest void on the ground of remoteness, but charitable corporations so favoured cannot create perpetuities for purposes which are not charitable.

Jurisdiction.—The duty of carrying charitable trusts into execution may be confided to corporations or to trustees. Corporations, unless they exist by common law or prescription (presumably created by the Crown at some time), can only be created by consent of the Crown expressed in Act of Parliament or charter. Corporations are (1) sole, and (2) aggregate. A corporation sole consists of one person and his successors, *e.g.* the sovereign, bishops, rectors, and vicars. The parson as a corporation sole is competent to hold estates for charitable uses, but not goods. The churchwardens, on the contrary, are a corporation able to take personalty, but not lands. Corporations are also ecclesiastical and lay, the last again are eleemosynary and civil. Our attention is chiefly due to the first of this second division.

Eleemosynary corporations were anciently either hospitals or colleges. Modern charitable corporations for a variety of purposes have been created by later Acts of Parliament, *e.g.* Queen Anne's Bounty, The Society for the Propagation of the Gospel in Foreign Parts, etc. Civil corporations, *e.g.* municipalities, etc., have in times past been possessed of large and numer-

ous charitable funds, of which during late years it has been the policy of the Legislature to divest them. The charitable funds belonging to municipal corporations are governed by section 133 of the Municipal Corporations Act, 1882. The Municipal Corporations Act, 1835, put an end to the trusteeship of the municipal corporations affected by that Act. Trustees were then appointed by the Lord Chancellor on petition. This Act apparently transferred the right of administration only to the new trustees, and not the legal estate, which remained vested in the corporations. By the Charitable Trusts Act, 1853, provision was made for transferring the legal estate also from the municipality to the new trustees. These provisions are further amended in the above-mentioned section of the Act of 1882, and the trustees so appointed become seized of the property of their trust, and the expense of further conveyance and transfer is avoided. The position of municipal charities is further affected by the Act of 1883, which we notice later on in connection with the additional duties of the Charity Commissioners.

In cases where no trustees are appointed, the Crown as *parens patriæ* will see to the carrying out of the trusts. For the rest, charitable trusts are liable to the control of the following authorities:—

The First Jurisdiction is that of the Visitors.—Ecclesiastical and eleemosynary corporations are in their nature visitable. In the case of civil corporations the jurisdiction has been transferred to the Court of Queen's Bench. The right of visitation is incidental to all eleemosynary corporations. The Act of incorporation, as a rule, provides visitors; failing this the founder and

his heirs are visitors. If the heirs of the founder become extinct or incapable, the right of visitation devolves on the Crown. The powers of a visitor have been described as amounting to "an authority to inspect the actions and regulate the behaviour of the members that partake of the charity, the object thereof being to prevent all perverting of the charity, or to compose differences that may happen among the members of the Corporation" (Tudor quoting Holt, C.J., p. 77). The decision of a visitor, given within his powers, is final and not examinable at law or in equity, but the visitor has no power of revision over the objects of a trust.

Jurisdiction of the Courts.—The jurisdiction of the Court of Chancery originated with the Statute of 43 Eliz. c. 4. That Act was not only an Act to encourage charitable foundations, but was designed to protect and recover from improper uses existing charitable funds. The Court has, therefore, exercised a right of executing, determining, and enforcing trusts. It has also assumed the power of applying revenues according to the doctrine of *cy-près*, *i.e.* to promote objects in accordance with the spirit of the original foundation where literal compliance has become impossible. The jurisdiction of the Court, however, could not vary the terms of an Act of incorporation except as above, or where the express provisions of such an Act are incomplete.

Its right to apply the *cy-près* doctrine required that the expressed objects had clearly become impossible. "For the first principle of the execution of trusts is that the intentions of the person who creates them must be observed" (Tudor, p. 91).

The decision of the Court of Appeal in the case of

the Camden charities at Kensington, delivered by Sir G. Jessel, Master of the Rolls, has extended the principle of *cy-près* to a very wide limit (*Law Report*, 18 Ch. Div. 310).

The Charity Commissioners summarise the effect of this leading case as follows (Twenty-ninth Report, p. 9):—

It was laid down by those judgments that it is the duty of a Court of Equity—and of our Board as exercising in this respect the powers of a Court of Equity—to review the means which the founder of a charity has prescribed for carrying out the general intention of his foundation, whenever those means, by reason of changes which may take place, either in the value of the endowment, in the circumstances of the locality within, or of the population for the benefit of which the charity is administered, in the times, in the habits of society, in the ideas or practices of men, have become unfitted to secure the end which the founder had in view. The general principles thus enunciated are illustrated by their application in the course of those judgments to the two cases of trusts for apprenticeship and for doles of money. It was laid down by the Court of Appeal that the end aimed at by a trust for apprenticeship is to give the objects of the charity such an education as will enable them to gain their livelihood in an honest and respectable manner (p. 326), and it was accordingly held that funds subject to a trust for apprenticeship might properly be applied to general educational purposes for the benefit of the objects of the trust. In the case of dole charities, too, a literal adherence to directions for the general distribution of doles of money received an unqualified condemnation from the Court, as "a practice which would be more honoured in the breach than in the observance," and as to which there is no doubt that it tends to demoralise the poor, and to benefit no one. . . .

The extension of doles is simply the extension of mischief (p. 327). It was laid down that a change of circumstances would warrant the disregard by the Court of provisions for the personal receipt of money by the objects of a dole charity, as being merely means to the general end of benefit to the poor; and that the funds of such a charity might properly be applied, either in the creation of permanent pensions for the poor, as distinct from the casual payment of doles, or in promoting the formation by the poor of habits of thrift and providence, by indirect means, such as assistance given to Provident Clubs and the like.

Proceedings by information having been found cumbersome and expensive, the Court was given more summary jurisdiction by the 52 George III. c. 101, and by section 28 of the Charitable Trusts Act, 1853. The jurisdiction of the Courts still exists, but it has fallen to a large extent into desuetude, as the Charity Commissioners have been found a simpler and more convenient tribunal.

The Court, it should be observed, will not retain the management of a trust, but will issue directions to the trustees. Money given to an existing charitable institution does not require a new scheme. It becomes part of the funds of the institution. Frequently, however, a scheme has to be promulgated. When the gross income is under £30, schemes may be established and altered at Chambers, when it is under £50, the County Court has a jurisdiction, but orders require the confirmation of the Charity Commission.

The Jurisdiction of the Charity Commissioners is based on the Charitable Trusts Act of 1853, 1860, and a long course of legislation which from time to time has added

to the duties of the Commission. These Acts vest in the Charity Commissioners appointed by the Act of 1853, the powers recommended by the Select Committee of the House of Commons reporting in 1835, with the one exception of the power of independent audit. These powers may be summarised as follows:—

(1) Inquiring into the administration of charitable trusts.
(2) Compelling the production of accounts.
(3) Supplementing powers of trustees where defective.
(4) Securing safe custody of property.
(5) Extending the doctrine of *cy-près*.
(6) Controlling, facilitating, and reducing the expenses of legal proceedings.

These powers are theoretically the same as those exercised by the Court of Equity, but by subsequent legislation they have been modified and extended.

The Act of 1853, and the amending Act of 1855 required the Commissioners to resort to the Court of Chancery or to Parliament for revisional powers in each case. This was found cumbersome. Accordingly, in 1860, further judicial powers were conferred on the Commissioners in respect of the appointment and removal of trustees, the assurance and vesting of estates, and the establishment of schemes. Their jurisdiction is, however, limited to the case of charities of which the gross annual income does not exceed £50, except upon the application in writing of the trustees of the charity or a majority of them. These Acts left untouched the jurisdiction of the Court of Chancery, but the result has been that application to the Court has almost entirely

ceased. From 1854-1860, 549 applications were made to the Court of Chancery to confirm proposals authorised by the Commissioners, and 730 to the County Courts. In the ten years following, 90 applications were made to Chancery, 8 to County Courts, while 3056 orders were passed by the Charity Commissioners. Since that date the "easy and simple course of procedure, free from technicality and almost wholly free also of cost," afforded by the Charity Commissioners has been more and more used, while practically the jurisdiction of the Courts has become obsolete.

By section 2 of the Charitable Trusts Act 1860, the Board of Charity Commissioners are empowered, upon the application of the Attorney-General, or of the trustees, or of persons interested, or of two or more inhabitants of any parish, to make effectual orders for the establishment of a scheme for the administration of a charity. The Board must, however, inform the trustees of their intention, and where the gross income is over £50 the application of the trustees is requisite. Public notice has to be given of any proposed order, and time allowed for the receipt of objections or suggestions. The Attorney-General, or any person authorised by him, or by the Board, may, within three months of publication, appeal by petition to the Chancery Division, but a scheme settled by the Charity Commissioners will not be set aside unless they have exceeded their powers.

The appeal from a decision of the Commissioners under the Charitable Trusts Acts is to the Courts. Under the Endowed Schools Acts, as presently to be noticed, the appeal must go through the Education Department or the Privy Council to Parliament.

The constitution of the Charity Commission must now be briefly set out. The first section of the Act of 1853 provides for the appointment of four Commissioners and one secretary. Three Commissioners hold office during good behaviour, the fourth Commissioner and the secretary hold office during the pleasure of Her Majesty. The three Commissioners are salaried officials, incapable of sitting in Parliament. The fourth Commissioner is a member of Parliament, and is unpaid. The fourth Commissioner, though not a member of the Government, is a member of the political party in office, and represents the Commission in the House of Commons.

The Endowed Schools Act of 1874, as we shall presently see, transferred the powers previously exercised by the Endowed Schools Commissioners to the Charity Commissioners, and by section 2 of that Act it was provided that Her Majesty, by warrant under her sign manual, may "from time to time appoint any number of persons not exceeding two to be paid Charity Commissioners for England and Wales, and a person to be secretary, in addition to the three paid Charity Commissioners and secretary capable of being appointed under the Charitable Trusts Act 1853 to 1869." The two additional Commissioners hold office during Her Majesty's pleasure. In 1886 the office of secretary to both departments (*i.e.* the Charitable Trust Department and the Endowed Schools Department) was united on the appointment of the present secretary, Mr. Fearon.

The staff of the office consisted, in 1894, of the Commissioners and secretary as above, two assistant secretaries being also assistant commissioners and official

trustees of charitable funds, eight assistant commissioners, besides one employed for five years, and five others temporarily employed, four principal clerks, two accountants, with about fifty other clerks and a certain number of messengers. The cost of the Charity Commission in 1879-80 was £29,699; in 1884-85, £30,521; in 1894-95, £40,380. The Committee of 1894, from whose Report these particulars are taken, were of opinion that the position of the Charity Commission had become analogous to that of the Poor Law Commission which, in 1847, was abolished and replaced by the Poor Law Board, with a member of the Government as president, responsible to Parliament. The Committee accordingly recommend that the responsibility for the control of endowments should be added to those of a minister of education. "Such a minister would be, really as well as technically, responsible for the schemes which he presented to Parliament. He would be in a position to defend the estimates of his department on their merits; and he would be able to bring pressure to bear on the Treasury in order to secure needful provision for his work."

CHAPTER VII

SOME ADDITIONAL DUTIES OF THE CHARITY COMMISSIONERS

NEW duties have been, from time to time, entrusted to the Charity Commissioners. The most important of these is the jurisdiction confided to them over educational endowments, which, as noticed in the last chapter, has been specially provided for by an increase of staff. The history of the question requires somewhat fuller notice.

In 1864 a Royal Commission was appointed under the chairmanship of Lord Taunton, and comprising among its members Lord Derby, Sir Stafford Northcote, the present Archbishop of Canterbury, Mr. W. E. Forster, and others, to inquire into the schools not included in the scope of two previously appointed Commissions, one called the Public Schools Commission, and the other generally known as the Popular Education Commission dealing with elementary schools. The whole field lying between those two extremes, the public schools on the one hand and the elementary schools on the other, formed the subject-matter of the inquiry of the Schools Inquiry Commissioners. They reported in 1868, and so deep was the impression created by their

disclosure of abuses that Parliament at once passed a suspensory Act with a view of preventing the acquisition of new vested interests.

This was followed next year by the Endowed Schools Act of 1869. By that Act Commissioners were appointed who "shall have power, in such manner as may render any educational endowment most conducive to the advancement of the education of boys and girls, or either of them, to alter and add to any existing and to make new trusts, directions, and provisions in lieu of any existing trusts, directions, and provisions which effect such endowment and the education promoted thereby, including the consolidation of two or more such endowments, or the division of one endowment into two or more endowments." For this purpose the Commissioners are to inquire, and where, in their judgment, this course seems necessary, to prepare drafts of schemes, and to publish them for the information of all concerned. This publication is to run for three months, (the period was subsequently reduced to two months). The Commissioners are to consider such objections and alternative schemes as may be proposed. They are then, if they think fit, to frame a definitive scheme and submit it to the approval of the Committee of Council on Education, a department of the Government for the time being, and meaning in practice the Lord President or Vice-President of the Council. A further publication of one month by the Education Department is then required. At the end of the month the Department considers such objections as have been raised. It may disapprove or approve, or remit the scheme again to the Commissioners, with a declaration containing sugges-

tions for amendment. The Education Department has, it may be observed, no initiative authority, and their influence over schemes is of an indirect character. When, with or without preliminary negotiation, the Department has approved a scheme as finally settled by the Commissioners, the scheme is again advertised, and notice is given that the scheme may be approved by Her Majesty in Council without being laid before Parliament, unless within two months a petition is presented to Her Majesty in Council against the scheme, or to the Education Department praying that the scheme may be laid before Parliament. Certain bodies and persons are specified by the Act as entitled to petition. If no such petition is made the scheme is passed. If, however, petition is made to the Judicial Committee of the Privy Council, this body may disapprove the scheme, and the proposal falls to the ground. If, on the other hand, it approves the scheme has to be laid before Parliament. When a petition is presented to the Education Department the scheme must be laid before Parliament. Arriving before Parliament, the scheme has to be laid there for two months during the same session before Her Majesty can approve it. Within these two months an address may be presented by either House of Parliament, praying Her Majesty to withhold her consent from the scheme or from any part of it. If no address is presented the scheme is approved.

Neither Parliament nor the Education Department has directly any power to insert provisions into such schemes. This can only be done by the Commissioners, and the superior authorities can only accept or reject the scheme.

The following exemption from the jurisdiction of the

Endowed Schools Acts or some of them may be recorded. It should be noticed that exemption from these Acts does not constitute exemption from the Charitable Trusts Acts, and that the Endowed Schools Acts are directed exclusively to the establishment of schemes. When a scheme has been adopted, unless specially exempted, it comes under the jurisdiction of the Charitable Trusts Acts. The exceptions are as follows:—Eton and Winchester, which are also exempt from the Charitable Trust Acts, Charterhouse, Harrow, Rugby, Shrewsbury, and Westminster and their endowments; endowed elementary schools having an income from endowment not exceeding £100 a year, except in Wales and Monmouthshire, where the jurisdiction of the Endowed Schools Act has been restored for the purposes of the Welsh Intermediate Education Act, 1889; chorister schools, and some others of minor importance; also every educational endowment founded between the 2nd of August 1810 and the date of the principal Endowed Schools Act, viz. 2nd August 1869, unless the governing body consents to the proposed scheme. With the exception of Eton and Winchester all these endowments are subject to the Charitable Trusts Acts.

In all these arrangements it may be observed that the initiative for the making of schemes lies entirely with the Charity Commissioners. It has been noticed, in another connection, that the Charity Commissioners have always favoured the plan of enlisting local and representative assistance in the management of their schemes, and this policy has by several recent Acts been considerably extended. In their Thirty-ninth Annual Report (for 1890) the Commissioners remark that the interposition of a representative local authority between the

local administrators and the central Board is as requisite now as it was when recommended by the Schools Inquiry Commission of 1864-67. "Of such a co-ordination," they go on to say, "of local and central authority the constitution, by the Welsh Intermediate Education Act of 1889, of a Joint Education Committee in each county in Wales and Monmouthshire, affords a recent and interesting example." This Act, it would seem, goes somewhat beyond the recommendation of the Commissioners, for, in effect, it creates a body with initiative, and not merely administrative authority. The Act in question, say the Commissioners in their Thirty-seventh Report, has produced certain changes in their work in Wales under the Endowed Schools Acts. "The most important of these are the transfer of the initiative in the preparing of schemes from ourselves to the Joint Education Committees of the several County Councils, and the large accession of funds which may become available for intermediate education in the form of county rate and Treasury subvention." The procedure is further explained by Sir George Young, "a Charity Commissioner under the provisions of the Endowed Schools Acts," in his evidence before the Select Committee on the Charity Commission 1894 (Q. 1346). The Joint Committee of a county is constituted by three persons nominated by the County Council, and two persons by the Lord President of the Council as the parliamentary head of the Education Department. Schemes, proposed by these Joint Committees, and based usually, and as a matter of arrangement, on drafts originally prepared by the Commissioners, are submitted to the Commissioners with such amendments as the Joint Committees may

deem desirable. The Commissioners may agree or disagree. If they agree the procedure continues as under the Endowed Schools Acts. If they disagree, they submit to the Education Department two schemes: the scheme of the Joint Committees and a scheme of their own. As a rule the two schemes have much in common, and the alternative proposals are printed in parallel columns in one document. It appears from evidence given by Mr. Acland before the same Committee, that when an irreconcileable difference of opinion has arisen between the local Joint Education Committee and the Commissioners, as in the Flintshire case, the Education Department has, at the suggestion of the Commissioners, taken the responsibility of approving the Joint Committee's scheme. This the Commissioners, in the case mentioned, accepted with a final protest, to the effect that this acceptance "is purely ministerial and not taken on any responsibility of theirs." This protest the Education Department declined to accept, and the controversialists, though allowing the scheme to go forward, remain presumably of the same opinion still.

Section 22 of the Thirty-second Report of the Charity Commission refers to a further extension of local authority in respect of technical education:—

"The provision made by the Local Taxation (Customs and Excise) Act, 1890, for the distribution to County Councils of certain funds dealt with by that Act, with power to contribute the same for the purposes of technical education within the meaning of the Technical Instruction Act of 1889, has an important bearing on our work under the Endowed Schools Acts." The Report goes on to urge that some clearer definition is

desirable as to the limits of technical education, and appears to favour the view, that such ambiguity as at present exists might best be removed by rendering the grants of County Councils applicable to secondary education generally.

The Fortieth Report refers to many educational charities which have hitherto evaded reform on the ground that their funds were too small and insignificant to perform any useful work. Some of these, it is said, with the aid of a grant under the Location Taxation (Customs and Excise) Act, 1890, are now becoming valuable centres in a system of intermediate education.

The Forty-second Report (for the year 1894) records the completion of a quarter of a century since the passing of the Endowed Schools Act, 1869, and the Commissioners signalise the occasion by making some general remarks on their work. Among the difficulties which they have to meet, one arises out of the establishment of higher grade elementary schools, supported by rates and parliamentary grants. These schools compete with endowed schools which give the same class of education, and threaten "to interfere seriously with the prosperity" not only of the third grade, but also of the second grade endowed school. This is a competition, the Commissioners remark, "to which . . . it is difficult to foresee any satisfactory end without the help of legislation." They conclude their review of these twenty-five years of work by referring to certain endowments, "of unusual magnitude and importance," for which schemes had been adopted during the period under review.

These are as follows :—

Harper's Foundation, at Bedford.

The Schools of King Edward the Sixth, at Birmingham.

Alleyn's College of God's Gift, at Dulwich.

St. Olave's Grammar School, at Southwark.

Sir Andrew Judd's Foundation, at Tonbridge.

The Grammar School, at Manchester.

Jones' Almshouse and Grammar School Foundation, at Monmouth.

The general result of these schemes is that, whereas at the date of the Schools Inquiry Commission these foundations were educating 2511 boys as secondary scholars and 2728 elementary scholars, they are at the present time educating 7273 boys and 2590 girls as secondary scholars and 4020 elementary scholars. In addition to the above the great foundation of Christ's Hospital was reorganised by a scheme approved in 1890.

It is not too much to say that the whole of the secondary education of the country has been remodelled by the action of the Commissioners. The following figures show the extent of their labours :—

SUMMARY OF SCHEMES UNDER THE ENDOWED SCHOOLS ACTS APPROVED BY HER MAJESTY

Year of Approval.	Number of Schemes.	Income affected.
1871-1877	Submitted by Endowed Schools Commissioners 320	£168,157
1876-1886	Submitted by Charity Commissioners 473	243,146
Total	793	£411,303

The next table gives somewhat more fully the details of the last nine years:—

SUMMARY OF SCHEMES UNDER THE ENDOWED SCHOOLS ACTS APPROVED BY HER MAJESTY

Year.	No. of Schemes approved by Her Majesty.	No. of those laid before Parliament.	Income.
1887	33	2	£20,069
1888	27	2	11,331
1889	23	1	7,168
1890	20	4	71,972*
1891	30	5	36,945
1892	16	0	4,020
1893	England . 37	2	15,870[1]
"	Wales and Monmouth 6	3	22,551[2]
1894	England . 29	0	†134,653[3]
"	Wales and Monmouth 12	5	39,082[4]
1895	England . 31	3	39,574[5]
"	Wales . nil		
Total	264	27	£403,235

Adding the totals of these two tables, we reach the result that since the passing of the Endowed Schools

[1] Of this £10,099 was dealt with by amending schemes.
[2] Of this £18,423 was from sources other than endowment.
[3] Of this £126,624 was dealt with by amending schemes.
[4] Of this £28,478 was from sources other than endowment.
[5] Of this £20,073 was dealt with by amending schemes.
* This included Christ's Hospital with an endowment of about £60,000 per annum.
† Christ's Hospital again accounts for £66,000.

Act, 1869, 1057 schemes have been approved by Her Majesty, dealing with an annual income of £814,538. Some portion of these figures represents the same endowment dealt with on more than one occasion. Further, it is to be noted that, since 1887, out of 264 schemes finally approved, against only 27 had objection been raised, necessitating their being laid before Parliament.

Very large and important additional duties have been thrown on the Charity Commissioners by the City of London Parochial Charities Act, 1883. This was passed in pursuance of the recommendations of the Royal Commission of 1878, which reported in 1880. This Act is, perhaps, the largest measure for the revision of the objects of charitable trusts which has obtained the assent of the Legislature. The City of London, the richest and oldest part of the metropolis, has long ceased to be a residential quarter. Yet the comparatively small area of the city was probably more richly endowed with dole charities than any other similar area in the whole civilised world. They were of sufficient numbers and amount to warrant a special Act of the Legislature for turning them to some useful purpose. The Commissioners, accordingly, were by this Act given a temporary jurisdiction, first, to inquire into the charities enumerated in the digest of the Royal Commissioners; and, secondly, after due publication of the results of their inquiry, to propound schemes for their future government. For this purpose they were directed to divide the property affected into two categories: (1) Ecclesiastical charity property; (2) General charity property.

With Regard to Ecclesiastical Charity Property.—This is

to be applied, in the five parishes enumerated in the first schedule of the Act, to its present ecclesiastical purposes, if in the opinion of the Commissioners this application is beneficial, and to such other ecclesiastical purposes within the parish to which the property belongs as the Commissioners approve. The parishes on the first schedule are five large parishes on the outskirts of the city, which still, to a certain extent, are residential quarters. In the case of ecclesiastical charity property in the parishes contained in the second schedule of the Act (for the most part in the central and non-residential part of the city), the surplus income, after providing for existing ecclesiastical requirements, is to be handed over to the Ecclesiastical Commissioners for the maintenance of church fabrics and the endowment of benefices and kindred purposes in the more populous parts of London.

With Regard to General Charity Property.—In the parishes of the first schedule, subject to certain admitted vested interests, and to its continued application to original purposes, when the Commissioners deem this advisable, this property is to be applied to education, libraries, open spaces, provident institutions, and similar objects in the parishes to which the several funds belong. In the parishes of the second schedule, subject as above, the surplus funds may be devoted to the above enumerated objects for the benefit of the poorer classes of the metropolis generally. Section 48 of the Act provides for the creation of a new governing body, to be called the Trustees of the London Parochial Charities, which "shall administer the property hereinbefore directed to be placed, by schemes to be framed by the Commissioners, under its administration and management." The

Commissioners, however, are given power, where they think it advisable, to continue the management of charities by existing trustees, and to create new and independent bodies of trustees. Of this new governing body five members are appointed by the Crown, four by the Corporation of the City of London, and the remaining twelve by such bodies or persons as the Charity Commissioners may by scheme provide. The Commissioners' scheme for the constitution of the central governing body is published in their Thirty-ninth Report, p. 128, *et sq.* The additional members to be appointed are four by the London County Council, two by the Ecclesiastical Commissioners, and one by each of the following: the University of London; the Council of University College, London; the Council of the City and Guilds of London Institute; the governing body of the Bishopsgate Foundation; the governing body of the Cripplegate Foundation. The scheme contains elaborate financial arrangements for vesting the property affected in the Official Trustee of Charity Lands and the Official Trustees of Charitable Funds, and for dividing the property into the several necessary accounts. The capital and estate remains vested in the Official Trustee of Charity Lands, who is the secretary for the time being, and the Official Trustees of Charitable Funds, who are the nominees of the Charity Commission, while the income, and, when necessary, capital sums, are paid to the account of the central governing body, to be applied by them to the purposes authorised by their powers. Payments by the central governing body can only be made under schemes which have been approved by the Charity Commission. The same Report contains schemes for constituting

governing bodies for various undertakings approved by the Commissioners. The procedure for the publication and ratification of these schemes is the same as that described in connection with the Endowed Schools Act.

The Reports of the Commissioners contain very full accounts of the nature of their recommendations. In their Thirty-fifth Report for the year 1887, they announced that statements relating to all the parishes affected had been published. With regard to the surplus from the charities in the second schedule, available for the whole of the metropolis, the Commissioners had received many applications. They proposed to appropriate about £35,000 to the North Woolwich Gardens, Vauxhall or Carroun Park, and Raleigh Park. They were further of opinion that various proposals made to them "seem to point to the propriety of applying a large part of the surplus to assist in the establishment of institutions of this nature (*i.e.* institutions like "the Regent Street Polytechnic and the Beaumont Institute or People's Palace"), which, under the regulating influence of the new governing body to be hereafter created under the Act (and to which the management of the general surplus will be entrusted), may be co-ordinated and thus rendered more efficient and more economical in their administration, and which may extend their influence through other smaller institutions to persons who are not yet, in respect of age or training, competent to participate directly in their benefits." These beginnings indicate the line of policy followed by the Commissioners. Subsequent Reports, more particularly the Thirty-ninth, Fortieth, Forty-first, and Forty-second, give detailed information as to the carrying out of their work. The following

extract from the Forty-second Report will sufficiently illustrate the manner in which the Commissioners have applied the funds within their control up to that date, *i.e.* the end of 1894.

It will thus be seen that the total sum in cash expended out of the central fund capital account has been as follows :—

	£	s.	d.
Amount realised by sale of stock .	£272,652	15	4
Amount of cash applied . .	56,579	5	5
Total . . .	£329,232	0	9

This sum was expended :—

	£	s.	d.
For purposes of Schedule II., Part I. (open spaces) . . .	£161,000	0	0
For purposes of Schedule II., Part II. (institutions) . . .	152,959	16	9
Paid to central governing body as income	15,000	0	0
Repayments in respect of certain charities not included in schemes	272	4	0
	£329,232	0	9

Among the grants to open space purposes are £50,060 to Hampstead Heath, £47,500 to Clissold Park, £25,000 to Brockwell Park, etc. In most cases these sums were granted to meet voluntary contributions raised by local effort. The same is true of the next head of expenditure. Among the institutions profiting are Bishopsgate and Cripplegate Foundations, each receiving a sum of £40,000. Regent Street Polytechnic received £11,750, the People's Palace £6750, the City Polytechnic Insti-

tutes, £45,000. Other polytechnics, in all to the number of nine, had received promises of assistance, conditional in all cases, on support being given from other sources. The case of the New Institute at Woolwich is cited as an institution not founded under this Act, but as one to which the Trustees of the London Parochial Charities felt themselves entitled to promise a sum of £1000, the Technical Education Board of the London County Council promised £1500, the Woolwich Board of Works £500, and the Secretary of State for War £200, making a total of £3200.

Under the express direction of recent Acts of the Legislature, therefore, the Charity Commissioners, as the official controllers of the national charitable funds, may be said to have adopted the policy deplored by Mr. Collings. As far as possible they are diverting dole charities to provision of open spaces and institutions of a more or less technical-educational character. With regard to open spaces this use of endowments meets with general approval, and probably would not be objected to even by Mr. Collings. On the question of technical and secondary education opinion is more divided. We have already mentioned Mr. Collings' objection to what he considers the spoliation of the poor, and we may now add a doubt which has been thrown on this policy from another quarter. While no one denies the advantage of a well-developed system of technical education, there are those who, like Lord Armstrong (and it would be difficult to cite a more competent authority), argue that technical education given in schools is a delusive substitute for the training to be

gained in a real workshop connected with one of the great industries of the country. In volume xxiv. of the *Nineteenth Century Review*, for the year 1888, there are two remarkable papers by Lord Armstrong, "On the Vague Cry for Technical Education," and "On the Cry for Useless Knowledge." The following quotations contain arguments to which the experience and high character of the writer give great weight. "Sir Lyon Playfair," he says, "declares himself an advocate of including, within the scope of technical education, the teaching of specific trades and industries. I, on the contrary, say that workshops and factories, and other places where actual business is carried on, are the proper schools for the learning of such trades and industries" (p. 654). The number of persons from whom high scientific acquirements are needed is very limited, and such persons have no difficulty in obtaining the necessary training. Technical education is put forward as a means of coping with foreign competition. It is very obvious, however, that successful business operations require only a very limited number of highly trained men of science; what is required from the rank and file is honesty, punctuality, industry, and common sense, work-a-day accomplishments to be acquired in the ordinary intercourse of life rather than in the lecture rooms of a polytechnic. Lord Armstrong states his own experience in forcible terms:—"Men of capacity and possessing qualities for useful action are at a premium all over the world, while men of mere education are at a deplorable discount. It is melancholy to know, as I do from experience, how eagerly educational attainments are put forward by applicants for employment, and how little weight such

claims carry in the selection. I can affirm with confidence that, had I acted on the principle of choosing men for their knowledge rather than their ability, I should have been surrounded by an incomparably less sufficient staff than that which now governs the Elswick works." In Polytechnics under schemes of the Charity Commission, and also in the Technical Instruction Act, 1889, technical instruction is defined so as to exclude the teaching of any particular trade or industry. Hence Lord Armstrong's objection has, to some extent, prevailed. This, however, has not been due to his authority, but to the threatened opposition of the Trade Unions. These are disposed to regard technical education as an infringement of their asserted prerogative to limit the number of apprentices in each department of the labour market. Their argument assumes, as against Lord Armstrong, that technical education, organised in schoolrooms by the State, will confer a valuable industrial training, but they object to its being conferred because it would interfere with their monopoly. They are opposed to free trade in labour, and *a fortiori* they are opposed to competition artificially promoted by State or charitable subventions. This objection, it may be remarked in passing, is an objection to all State education, and seems to carry us much farther than its authors intend.

To return to Lord Armstrong's argument, knowledge in itself is always a good thing, but it is possible that for this particular class the practical discipline of industrial life, which does not necessarily exclude the would-be student from acquiring familiarity with the scientific aspects of his industry, is

of more value than any amount of academic learning. This department of educational work is recommended on the ground that it is necessary for our commercial supremacy. This Lord Armstrong denies; and, if his premisses are correct, he might modify and even emphasise Mr. Spencer's maxim. Such arrangements, he might say, while they educate in one direction, which he affirms to be a useless direction, tend to "uneducate" in another direction, by forestalling and deranging the organisation of that real system of industrial apprenticeship which is indeed necessary for the maintenance of our industrial supremacy. Lord Armstrong's argument must not be understood as a plea for a general and literary education as against the scientific education which Mr. Spencer seems to approve, but merely as a statement of his opinion that the so-called technical education given in schools is comparatively worthless for serious industrial purposes. The question as to how a wise system of national education should apportion the time devoted to science and to literature respectively is a distinct and separate issue.

These criticisms, however, apply rather to the application of money raised by public taxation than to the no man's money of charitable trusts, for which it is so difficult to discover an innocuous application.

The devotion of the Commissioners to the cause of education has of recent years been tempered by the following considerations which are cited from their Forty-second Report, *i.e.* for the year 1894. After remarking on the power given to them, under section 30 of the Endowed Schools Act, 1869, to divert dole charities with the consent of the trustees to educational purposes,

they remark: "The large accretions made to the educational resources of the country under the Technical Instruction Act, 1889, the Welsh Intermediate Education Act, 1889, and the Local Taxation (Customs and Excise) Act, 1890, have diminished the reasons for such appropriation; and in the case of doles, other applications are now more favoured, as, for instance, to old age pension funds, which have the recommendation of being nearer in object to the present application, and do not tend, if rightly safeguarded, to pauperise the recipient" (p. 42).

We may, in conclusion, very briefly indicate some minor Acts passed in recent years which affect the work of the Commissioners. By the Prisons' Charities Act, 1882, the Commissioners have power to establish schemes for the regulation of charities of this character. The Allotments Extension Act, 1882, requires trustees of lands held in trust for dole charities to let them for allotments under rules to be approved by the Charity Commissioners. This direction has not been, and probably cannot be universally carried out, but it is evidence of the special disfavour with which Parliament and public opinion are inclined to regard dole charities. The Municipal Corporations Act, 1883, applies to certain unreformed municipal corporations not subject to the Municipal Corporations Act, 1882. These corporations are set out in a schedule. It applies also to places where the corporation has been practically extinct. Charities vested in corporations in the specified places "shall be applied for the public benefit of the inhabitants of the place, in such manner as may be, for the time being,

provided by a scheme of the Charity Commissioners, or, in a case where a scheme is made by the Local Government Board, by that scheme, and shall vest in such persons or body corporate as may be specified in such scheme."

The Charitable Trusts Act, 1887, was designed to effect changes in the constitution of the Charity Commission, rendered necessary by the great increase of its duties as described in the foregoing recital. It puts an end to the appointment of inspectors, and substitutes assistant commissioners, whose powers are made available for the enlarged duties of the Board. The Act further reorganises the department of the Official Trustees of Charitable Funds.

This last is one of the most important pieces of machinery introduced originally in the Act of 1853, and amended from time to time by subsequent Acts. The official trustees consist of such officers of the Board, as the Board, with the approval of the Treasury, shall from time to time appoint. Separate accounts must be kept for each charity. The safety of the funds is thus secured, and the expense of devolution from one set of trustees to another is obviated, while the administration of the income by the local managers of the charity is not interfered with.

From the latest (the Forty-third) Report of the Commission, it appears that £17,841,433 : 9 : 9 was held by the Official Trustees on 31st December 1895, divided into 18,449 separate accounts. Of this amount £14,378,133 : 8 : 6, is represented by Consols (2¾ per cent Consolidated Stock). No estimate is given of the value of property held by the Official Trustee of

Charity Lands, who is the secretary of the Commission for the time being.

The functions of local trustees and of the Charity Commissioners have been well summarised in the following passage from the Twenty-ninth Report of the Commission, p. 21 :—

> The trustees are the sole and responsible administrators of the income of the charity within the limits prescribed by the founder. They have no power, however, to deal with capital, nor, as has recently been laid down with much emphasis by the Court of Appeal in the case of the Campden Charities at Kensington, to vary in the slightest degree the prescribed mode of application of income.
>
> The Charity Commissioners, on the other hand, are in no sense administrators of income. The constitution and maintenance of an efficient body of administrating trustees is as necessary to the discharge of their functions as it is to the due execution of the founder's intentions. But they are constituted the judges of all dealings with capital, as well as of all variations of the prescribed mode of giving effect to the objects of the charity.

The Local Government Act, 1894, effected an unexpected expansion of the jurisdiction of the Commissioners. The Act contains certain directions with regard to non-ecclesiastical parochial charities, and numerous applications have been made to the Board to decide the often difficult point whether a charity is ecclesiastical or not. These charities are now required to furnish accounts to the parish meeting, and the names of beneficiaries of dole charities have likewise to be communicated to the Parish Council. The publicity given to local charities

by this procedure has produced many applications to the Commissioners. Hitherto the operations of the Commissioners, like those of a Court of Equity, have practically been confined to cases of charities which have been specially brought to their notice, and accordingly only a small proportion of the total number of charities has been brought under their consideration. The existence of the Parish Council, and of the rights conferred on it with regard to charitable trusts, is likely to bring a much larger number of parochial charities within the cognisance of the Commissioners. The Act is full of ambiguities which render its interpretation a matter of considerable difficulty, but over and above these indirect results, its operative part, in so far as it affects charitable trusts, is to associate representatives of the Parish Council with the old trustees for the management of non-ecclesiastical parochial charities.

The object for which the Charity Commission exists is (1) to protect the charitable property of the nation; and (2) to divert the application of charities from obsolete and mischievous objects to those more in consonance with the requirements of the time. It might seem that the jurisdiction which we have endeavoured to describe would be ample for this purpose. But this is not the case. A reference to the limitations on its authority will show that in several respects its powers are altogether ineffectual to remove the inconveniences caused by the State's admission of the perpetuity of charitable endowments.

In giving evidence to the Select Committee of 1894, Sir H. Longley, the chief Commissioner, was invited to

express an opinion as to how the Commission might be given "more effectual means of dealing with the business which will come before it." His answers are instructive. The provision which, in the case of charities with more than £50 of annual income derived from endowment, requires the consent of trustees to the adoption of any scheme promulgated by the Commission, is a serious obstacle to revision in precisely those instances where revision is most urgently required. Further, the work of the Commission is seriously hindered by their lack of any power to establish a special audit in cases where they think this desirable. In cases where maladministration and misapplication of funds are suspected, a local and possibly interested and perfunctory audit is not satisfactory. No power of general audit is asked for; as clearly the magnitude of such a task as a general audit of charitable funds renders it altogether impracticable. This may be gathered by Sir H. Longley's estimate given to the Committee of 1894 of the number of charities under the jurisdiction of the Commission. He puts it at 60,000 in 1894, and adds that it increases at the rate of 500 per annum.

He also consents to the suggestion that no new charitable trust should be deemed validly created until it has been reported to the Commission. It is stated, however, that by an informal agreement with the authorities at Somerset House, information is given to the Commission of any wills which purport to create charitable trusts, and he does not appear to attach much importance to the point.

In answers to questions arising out of the proverbial unwillingness of the Treasury to sanction an increase of

staff and expenditure, he thinks that charities might fairly be asked to contribute to the cost of the Commission, but the suggestion was thought impracticable by Mr. Goschen when Chancellor of the Exchequer. "The weak part of the system is not the want of power to get accounts, but the want of staff to examine all the many thousand accounts which come before us . . . in fact Parliament has not provided us with the means of doing it." With a larger staff more work of a useful character could be done.

He comments also on the difficulty of revising the objects of a charitable trust which has been established by Statute. A new Statute is required for the purpose, an expensive form of procedure practically prohibitive of reform. Greater facility for the revision of such statutory trusts is therefore urgently required. The last point which is of sufficient importance to warrant mention is his somewhat pathetic deprecation of a certain class of charity. "I should like to have it determined," he says, "that a gift to poor relations is not a good charity. It really comes to a sort of perpetual entail (which a man cannot make if he omits the word poor) in favour of a class of the man's relations. . . . I have in my mind a charity of John Harrison for his next of kin . . . its administration is attended with the greatest possible abuse." The founder of the charity has been dead 200 years, and there are stated to be some 1500 claimants on the list whose pretensions to relationship and to poverty it is impossible to verify. Apart from the trouble involved in the impossible and ungrateful task of administering such a fund, it would appear certain that the benevolence of the departed

Harrison had endowed his kindred not only with a fund, but with a permanent inability to achieve even a moderate success in life—a remarkable side-light on the influence of eleemosynary endowments.

CHAPTER VIII

THE CO-OPERATION BETWEEN LEGAL AND VOLUNTARY AGENCIES OF RELIEF

THE Legislature has in the 43 Eliz. c. 4 defined a charitable trust, and, as we have seen, the interpretation of the definition has expressly excluded the idea of private charity. To trusts which comply with the terms of the definition the State has extended a special protection. A charitable trust, once sanctioned, is a perpetuity, an incident of tenure which in other respects the law abhors. The inconvenience arising from artificial perpetuities amid a state of society which is constantly changing, has been met by vesting in various authorities, all tending to coalesce in the Charity Commissioners' Office at Whitehall, large powers of revision over the objects which are promoted by charitable trusts. There is no power vested in the Commissioners to make charitable property cease to be charitable. They cannot restore it to be held again in the private ownership of individuals. It is dedicated in perpetuity to public uses, but within certain limits the Legislature reserves to itself the right to vary the purpose to which it shall be applied. The eleemosynary funds thus created are

devoted to the relief of distress, to education, and other purposes. We have seen how, when the elementary education of the poorer classes was charged upon the rates and taxes of the country, and made gratuitous to the beneficiaries, the Commissioners adopted a policy of applying the educational funds under their control, as far as possible, to secondary education. It is one of their maxims that charitable funds should not, unless specially given for that purpose, be applied to the relief of the ratepayers. The Commissioners, as we have seen, have complained that the authorities responsible for elementary education are inclined to encroach on the province of secondary education. The distinction, nevertheless, is maintained, and, as Mr. Collings has objected, the adoption of it has involved the dedication, if not the diversion, of some educational endowments to the use of the middle class. Elementary education cannot be more than gratuitous, and, if it is made gratuitous by means of a rate-collected fund, the endowed funds devoted to that purpose become superfluous, unless they are used for the relief of the ratepayer. There is, therefore, no alternative to the course pursued by the Commissioners. It follows, therefore, that the policy to be adopted by the controllers of endowed charities, and in this connection we may add, by those responsible for the management of subscription-charities, must be decided by the attitude taken up by the predominant partner, that is, by the authority entitled to draw its supplies from the rates and taxes. With regard to educational policy a *modus vivendi* between legal and voluntary funds has been reached, which, if not strictly observed, is still of a fairly workable character.

On the other hand, with regard to the relation between charitable funds devoted to the relief and maintenance of the poor and the funds derived from Poor Law assessment there is no such understanding, and the most chaotic and mischievous confusion exists. The principle of division of labour, as between the Poor Law and charity, is stated by the authoritative text-books on the subject to be that the Poor Law should relieve destitution, and that charity should deal with poverty. This is admirable, but extremely vague. The word destitution does not, as far as we are aware, occur in any Act of Parliament defining the duties of the Guardians. The recommendation is derived from the Report of the Poor Law Commissioners of 1832-34, but, unfortunately, little or no attention has been paid to the practical definition which they gave of destitution. An applicant for relief is destitute when he is willing to surrender the maintenance which he derives from his own resources, in exchange for an adequate but carefully regulated maintenance within the walls of some Poor Law institution. No body of men is able to tell a destitute person at sight, and if the relief of destitution is the province of the Guardians the destitute must be marked out by an automatic test. An adoption of this rule would, of course, put an end to three-fourths of the pauperism of this country. This policy, as is probably well known to the reader, is implicitly recommended by the Poor Law Commissioners, explicitly by Professor Fawcett in his book on pauperism, and without exception by every competent authority on the subject of the Poor Law.

Under present conditions the Poor Law undertakes to give every kind of relief, and those forms of relief which

are forbidden by the orders of the Local Government Board are in many cases granted by means of a variety of evasions. The effect of this arbitrary license of local authority is twofold: first, as regards the poor themselves, second, as regards the work of charitable funds.

From a variety of causes—the general sentimentality of the times, the ignorance of local administrators, the pressure of a population which does not contribute to, but hopes to share in the general largesse, the corruption of politicians who regard the poor-rate as a mere electioneering fund—the Poor Law as administered throughout the greater part of the country is simply a disaster to the best interests of the poorer classes, and succeeds in maintaining a head of pauperism which, though it continues to decrease, is still a disgrace to the intelligence of the country. The system multiplies the number, and perpetuates the poverty of the poor relations of the State, in the same way as the fatal gift to his kindred made by the departed Harrison, as mentioned at the end of the last chapter.

There is, perhaps, no very recondite principle involved in the rule that elementary education is the responsibility of the State, and secondary education the care of endowments, except the common sense rule that it is undesirable that two public authorities should be competing in one and the same area of work. A similar principle might be held to explain the maxim that the Poor Law should deal with destitution or elementary poverty, and that charity should deal with what has been by analogy called secondary poverty; but the administrative value of the recommendation rests on other considerations which we shall presently endeavour

to establish. The observance of this, or indeed of any rule, depends entirely on the willingness of Guardians to adopt some principle for a division of labour. The power of the Charity Commissioners, and of the managers of charities supported by voluntary contributions, to establish any division of labour is very inconsiderable. The Charity Commissioners, acting amid difficulties which, in the present state of the Poor Law, are insuperable, have inserted in their recent pension schemes a rule confining the benefit of such charities to persons who have not been in receipt of Poor Law relief. The same course has been followed by many voluntary charities. The distinction, however, is altogether unsatisfactory in view of the attitude adopted by the predominant partner. The offer and acceptance of legal outdoor relief does not depend on the character of the poor, nor on the degree of their poverty, but entirely on the caprice of the local administrator. Roughly speaking, three out of every four paupers[1] relieved in England and Wales are outdoor paupers. Thus three-fourths of the pauperism of the country is not subjected to the only practical test of destitution which experience has devised. It is obvious that the number of applicants to a common fund which is not protected by this automatically working test will be very large. It is further obvious that, under the present conditions of distribution, there is no limit to the number of applicants who may become recipients. The persons who are eligible for charitable relief under

[1] The mean ratio of pauperism to population for the year ended Lady Day 1895 was 26·5 per 1000. Of this 6·9 was indoor and 19·6 was outdoor pauperism.

rules such as those laid down by the Charity Commissioners are equally eligible for Poor Law relief. It is the merest accident that decides by which fund their application for relief will be entertained. It is said, with a good deal of truth, that a poor person prefers to make application to the Poor Law rather than to charity. If people have paid rates, some slovenly-minded political sophist will try to persuade them that they have been contributors to an insurance fund, and that they are entitled to have their necessities relieved as a matter of contract. The poor-rate, we need hardly say, is not an insurance premium entitling the contributor to an increase of income as his occasions require, but a compulsory levy for those who actually are destitute. This feeling, however, does obtain, and it is one of the reasons why the existence of a Poor Law is a much more active incentive to unthrift than charitable funds. Again, the poor-rate is regarded as a common property, and few men will hesitate to apply for that which they have been accustomed to regard as their legal right. On the other hand, even the very poorest will show much moderation in making a demand on a charitable fund, more especially if that fund is drawn from the pocket of one with whom they have some personal intercourse. Lastly, it is much easier to get relief from a public Board spending the ratepayers' money than from a charitable committee. Few questions are asked, for the limited number of relieving officers employed is quite powerless to make any thorough investigation as to the antecedents and requirements of the crowds of applicants. The Guardians also are the servants of those who elected them, who have

now come to claim a performance of their promises. The ordinary Guardian has made no sort of study of the question. The granting of outdoor relief is the custom of the Board, and even though willing to incur great unpopularity a reformer is quite powerless to introduce a change. The consequence is that three-fourths of the persons relieved by the Poor Law are "secondary" poor, who, but for the attitude taken up by the Guardians, would with few exceptions continue to live on their own resources. That dispauperisation would follow the stricter line of policy suggested has been proved conclusively by experiments made under every variety of circumstances.

The earliest, and in some respects the most remarkable of these, was the attempt begun by Dr. Chalmers to keep the Poor Law out of the parish of St. John's, Glasgow, and successfully continued by him and by his successors for a period of eighteen years. This demonstration goes a good deal farther than there is now any need to press it. No reasonable person at the present day thinks it practicable to abolish the Poor Law at one stroke. The abuses which were rampant under the English Poor Law in Chalmers' day have been largely overcome by the introduction of the automatic test of the workhouse. That this should be used, as recommended by the Poor Law Commissioners, is a practicable measure of reform, which, if not so logical as that suggested by Dr. Chalmers for a part of the country then free from the evils of the English Poor Law, is still the greatest advance which the most sanguine reformer can expect at the present day. "In the work of abolishing legal charity," he says, "the heaviest conflict will not be with the natural poverty of the lower orders, but with that pride of

argument, and that tenacity of opinion, and all those political feelings and asperities which obtain among the higher order." As to the poor themselves, the voluntary parochial system which he advocated would, he said, "put them, and that chiefly out of their own capabilities, into a far better economic state than any legal or compulsory system of relief ever has, and, we shall add, ever can do." Dr. Chalmers' experiment was abandoned, not because it failed, but simply because it was overwhelmed by the introduction of a compulsory poor-rate. First its opponents denied its success, then they admitted its success, and attributed it "to the marvellous and preternatural strength of its projector." His answer is very conclusive: the system went on for many years after he left the parish, and its success was due not to the projector, but to the development of "their own capabilities" by the poor themselves.

Speaking of the final abandonment of his plan, he says, "This has long awakened my bitterest regret, but it cannot shake my confidence. Even one decisive experiment in chemistry will establish a principle that shall remain an enduring certainty in science, even though an edict of power, in the spirit of that blind and haughty pontiff who denounced the Copernican system, should forbid the repetition of it. My experiment has been made, and given forth its indelible lesson, though my experimentalists have been disheartened and scared away. This no more invalidates the great truth which they have exemplified so well than a mandate of intolerance can repeal a law of physical nature or change the economy of the universe."

At the present day it is no longer a question of one

experiment. The same experiment in the chemistry of human nature has been tried amid circumstances which appeared to present every kind of variety. The same results have in each case been obtained. The history of these reformed Unions has frequently been told. It belongs more appropriately to a treatise on the Poor Law, but as the policy there adopted is so closely connected with the administration of charitable funds, it is necessary to say something of the incident in this place. For the Poor Law aspect of the question the reader may be referred elsewhere;[1] here attention will chiefly be directed to the unofficial factors in the reform.

The following details as to the inner history of the movement are perhaps not so well known. The years from 1834 up to 1847 were marked by a prolonged and bitter attack on the policy of the new Poor Law. In 1847, with a view of closing the controversy, the constitution of the Central Board of Control was changed, and the Poor Law Board, with a president who should be a member of the Government for the time being, was substituted for the three Commissioners who had no direct representative in Parliament. The manœuvre was on the whole successful. The agitation calmed down. It is possible that the new central authority was less energetic and less peremptory in its method of enforcing reforms on the local administrations. Still, the progress which had been made was maintained, though the missionary spirit of the reformers of 1834 had expended itself. From 1849 to 1859

[1] *E.g.* To Mr. W. Chance's *Better Administration of the Poor Law*, or to a volume by the present author entitled *Methods of Social Reform*.

pauperism, with some slight fluctuations, continued to fall. From 1859 to 1870 the tide of pauperism seemed again to be flowing. It reached its highest level in 1862, a year marked by the distress of the Lancashire cotton famine. The winter of 1860 was a severe one, and the exceptional suffering of the poor attracted much attention, not only to their temporary embarrassments, but to their general condition. In 1860 a society, called the Society for the Relief of Distress, was formed in London mainly on the initiative of Mr. Bromley Davenport. Its members were for the most part young men of fashion, who desired to give some practical acknowledgment of their responsibility for the welfare of their poorer neighbours. In this there was no great novelty, for there has probably never been a time when the richer classes, in one way or another, have not sought to show their sympathy with suffering. The movement became noteworthy, more because of developments which have grown out of it, than because of anything which the Society itself has been able to effect. The object of the Society was to collect a fund which it entrusted to almoners. Their business it was to find out and relieve distress in the districts allotted to them. The difficulties which beset a young guardsman, who descended into an abject and poor district of London without any experience or definite instructions, may well be imagined. Some put themselves entirely into the hands of the clergy, others endeavoured to act independently. Considerable sums of money were given away, but a short experience convinced the more serious-minded members of the Society that a more systematic and laborious treatment of the problem was requisite.

Among the earlier almoners of the Society was Mr. Edward Denison, a man whose disinterested character and labour, as well as his too early death, made a profound impression on all who were privileged to come within his influence. A selection of the *Letters and Other Writings of the late Edward Denison, M.P. for Newark*, were published and edited by his friend the late Sir Baldwyn Leighton, Bart. (second edition, Bentley and Son, 1872; the first edition seems to have been a private issue). These letters are not a systematic treatise, but the confidential communications to his friends of a man profoundly interested in the solution of a difficulty in which he was practically a pioneer. The *Letters and other Writings of Edward Denison* has been frequently recommended as an introductory text-book to those who seek to qualify themselves for useful charitable work. Subsequent experience would, we believe, have induced the writer to modify some of the opinions which he tentatively confides to his familiar correspondents but as a whole the insight which it gives into the working of a mind at once benevolent, philosophic, and practical, as well as altogether exempt from any vestige of cant, make Edward Denison's Letters one of the most stimulating and instructive documents in the whole range of social economic literature.

To return to his connection with the Society for the Relief of Distress. On p. 7 of the preface, his biographer relates: "It was first as an almoner of the Society for the Relief of Distress in the district of Stepney that he was brought into direct contact with the London poor, when perceiving, as he writes, the 'unsatisfactory results of giving relief by doles,' he determined to attempt some

more thorough and drastic treatment. In the autumn of 1867, the second year of the great East End distress, he resolved to establish himself at Stepney, and see with his own eyes, and take an actual share in, the terrible struggle that was being enacted there. It was impossible, as he describes, to do any adequate work without residing on the spot, the waste of energy in locomotion being itself an interruption to steady, non-intermittent application, such as he had prescribed for himself. After the London season, then, of 1867 he took up his quarters in Philpot Street, Mile End Road, and remained there, with only very occasional visits to friends, for eight months. During that time he built and endowed a school, and himself taught in it and gave lectures to workmen. . . ." He then went to Paris and to Edinburgh to study the French and Scottish system of Poor Law. In 1868 he was returned for Newark as an "Independent candidate," and visited Jersey in 1869 with a view of studying there the problems of public relief. Delicacy of health, contracted by overtraining for a boat race at Eton, obliged him to leave England in the autumn of 1869, and he died in Melbourne on 26th January 1870 at the early age of thirty.

On 16th October 1866 he writes from Ossington: "If I am not going to be all the winter in town, I must give up my post under the Society for the Relief of Distress. Indeed, I am not sure that I should not have done so in any case. I don't believe in these doles of bread and meat, and the time they occupy in distribution withholds me from more solid and permanent schemes of assistance. I should visit as before in that

district on my own "hook," and apply what money I could scrape together myself, or beg from friends, in dealing thoroughly and radically with a small number of cases of aggravated distress. These bread and meat doles are only doing the work of poor-rates, and are perfectly useless; the chief use of this society and of many others, in my view, consists in bringing a considerable number of persons belonging to the upper classes in actual contact with the misery of their fellow-citizens, and so convincing them of the necessity of social reform."

In December 1868, with a somewhat fuller experience, he writes: "The public seems really awaking at last to some sort of perception of the precipice society in this country is approaching, through the maladministration of the Criminal and Poor Laws. Charity, too, is a frightful evil--not real charity, but subscription charity. Every human being has scope enough for all the money and all the effort he can spare in behalf of misfortunes which are known to himself personally, or to members of his home circle. The gigantic subscription lists, which are vaunted as signs of our benevolence, are monuments of our indifference."

On 10th May 1869 Mr. Denison made his first and last speech in Parliament, on a motion of Mr. Corrance (M.P. for Suffolk) relative to pauperism. He concurred, he said, with the hon. member for Suffolk, that the object to be kept in view was the absolute abolition of the Poor Laws, which were incapable of achieving that which they were intended to do. He also agreed that the time was come when the work should be completed. This was not a subject to be dealt with in a partial and

half-hearted way; a very serious reform must be introduced if anything was to be done at all. He further affirmed that one of the most deplorable features of Poor Law administration under the Act of 1834 had been the marvellous weakness of the Central Board, which had been anything but the despot it had been prophesied it would be, and had at times found itself absolutely paralysed by the resistance of the Guardians, and had been repeatedly foiled in the attempt to carry out common-sense reforms. Then, after approving the "absolute necessity of confining relief to the able-bodied, from whatever source they may come, to the workhouse," he goes on to urge that "there must be some test of the actual condition of those who apply for relief, and it must be a self-acting test, because no human being could actually tell at sight whether a man was actually in want or was not. There was little fear of persons becoming sick to obtain relief, and they could not make themselves aged and infirm. There was, therefore, no danger of increasing the numbers of these classes in receipt of relief, by administering relief outside the walls of the workhouse." A fuller experience would, we are sure, have convinced Mr. Denison of the unwisdom of this last concession. The compromise would not, of course, increase the number of the persons who became sick, but it would and does increase the number of persons who are destitute when they are sick. Outdoor relief to the sick, as all experience has shown, is a standing discouragement to insurance in a friendly society, and to all similar attempts to maintain the independence of the poorer classes.

In a letter of a somewhat earlier date, 20th December

1867, he writes, deploring the ignorance and apathy of the leaders of public opinion, in language which is unhappily just as true to-day as it was thirty years ago.

"You see the real truth is, sensation writing and reckless alms are fast doing away the great work of the new Poor Law in bringing up the people to providence and self-restraint. We are falling back into the bad old ways of the times at the beginning of the peace. You will find all the men who really give themselves most trouble about the poor are the most alive to the terrible evils of the so-called charity, which pours money into the haunts of misery and vice every winter. If we could but get one honest newspaper to write down promiscuous charity, and write up sweeping changes, not so much in our Poor Law theory as in our Poor Law practice, something might be done."

With the minor details of Edward Denison's opinions we are not concerned. It is obvious, however, that he had hit upon a line of thought and observation which, since his time, and directly under the influence of his example, has been worked out much more fully.

"It may not be generally known," says his biographer, Sir Baldwyn Leighton, "that in 1869 was formed in London the 'Society for Organising Charitable Relief and Repressing Mendicity,' which had its rise partly in the experience obtained during the East End distress, and with which the members of the Society for Relief of Distress, the true pioneers of the movement, are heartily co-operating.[1] Edward Denison served upon

[1] Sir Baldwyn Leighton's preface was written in 1871. It is satisfactory to notice that the same close co-operation still exists between the two societies in 1897.

some of the committees first formed, and took an active interest in the undertaking which is now rapidly extending its operations over all the metropolis, and gradually over all England." As, by the end of 1869, Denison had left England for ever, his active part in the foundation of the new society was not large. There were, however, others among his colleagues of the Society for the Relief of Distress who "really gave themselves trouble about the poor," and took practical steps for influencing public opinion on the general question of the administration of relief. One result was the formation of the London Charity Organisation Society.

The following explanatory paragraph, written in 1874 by Mr. Charles Bosanquet, the first secretary of the Society, is quoted in an account of the origin of the Society in the October and November numbers of the *Charity Organisation Review* for 1892.

"It would be difficult to give any accurate account of the various influences and movements that suggested and gave its final direction to the Charity Organisation Society. It is enough to say that early in 1869 Lord Lichfield and others, who had at first associated themselves together for a larger and less defined object, resolved that their society should be called 'The Society for Organising Charitable Relief and Repressing Mendicity,' and that their first action should be to endeavour to form local committees, with offices and paid agents throughout London, with a view to bringing about co-operation between charity and Poor Law, and amongst the various charities, and to rendering charitable relief effectual towards its main object—the cure as distinguished from the mere alleviation of distress." To this

paragraph was appended the following footnote:—"The experience gained by almoners of the Society for the Relief of Distress, which was established in 1860, the labours of Edward Denison in the east of London in 1867-68, the formation of the Edinburgh Society for Improving the Condition of the Poor in 1867, the success of the system of mendicity tickets at Blackheath in the winter of 1868, would all have to be mentioned as well as the co-operation of charity with the Poor Law in the Lancashire cotton famine, the general growth of public opinion, and the individual efforts of several members of the Society."

Dr. Hawksley, in a pamphlet published about this time, and Mr. G. M. Hicks, in a letter to the *Times* covering a page and a quarter, gave statistics as to the large amount of funds available for charitable purposes. Dr. Hawksley estimated the income of the charitable property of London at over seven millions. From the first the Society insisted on the necessity of establishing some well-understood principle for a division of labour as between the Poor Law and charity. The subject was much discussed, and various proposals were made and abandoned; but in the course of time the Society settled down to work on the lines that co-operation with the guardians should be by division of labour and not by charitable supplementation of inadequate Poor Law relief.

In only a very few instances were the guardians and existing charitable associations willing to fall into any sort of arrangement. The progress made in introducing a reasonable system has been extremely slow and partial, and also extremely precarious. Still a

great change has been effected in public opinion during the last twenty years. As originally projected, the Society was not to be a relief society at all. Its object was to induce relief institutions, both legal and voluntary, to fall into line and to divide the work on some reasonable principle. It would perhaps have been well if this design could have been maintained, but it was found impracticable. The Poor Law authorities, with one or two exceptions, declined to listen to argument. The guardians were appointed, they said, to dispense the patronage of outdoor relief, and the idea of State charity was agreeable both to them and to their constituents. As to the demoralisation caused by the system, they simply shut their eyes and refused to believe in it, an attitude which the great majority preserves to this day. With the legal authorities, after the force of argument had been used and definitely rejected, there was nothing more to be done.

The governors of voluntary charities, it might have been thought, would have been eager to fall into some reasonable arrangement. This, however, was not the case. Underlying the argument and policy put forward by the reformers, there was an assumption which was altogether unacceptable to the ordinary manager of a charity. The endeavour of the reformers to systematise relief was largely prompted by their faith in the absorbent powers of the healthy economic life of a civilised society. They believed that, with the adoption of a proper system, a large proportion of those who were then leading a life of dependence on alms would be restored to independence. They did not conceal, therefore, their expectation that the millions set out by the statisticians of the party,

Dr. Hawksley and Mr. Hicks, would be found more than sufficient. They had no wish to discourage charitable enterprise, but they did not wish it to run exclusively in mere channels of relief. All this was new to the benevolent public. The idea that there is a limit to the sums which can advantageously be expended in public charity is not familiar to the directors of charitable institutions. Their policy is to collect the largest sum possible, to run into debt for a considerable sum more, and to use this fact as an inducement to obtain larger supplies from the public. There is never any difficulty in obtaining a sufficient number of applicants ready to share in any distribution of benefit that is going. The new Society had, and wished to have, no funds of its own for charitable distribution. Its object was to induce existing institutions to adopt a code of rules which hitherto had been altogether foreign to their practice. They were to divide the work of relief with the Poor Law authorities, but the Poor Law authorities had no wish to join them in any such plan, and the charities were, as a rule, altogether sceptical as to the advantage to be derived from it. Naturally nothing came of this proposal of a third party, when the principals concerned had no wish to act in concert. They were urged to give their charities to those who had made some effort to provide for themselves, so that their distributions should be an encouragement to thrift rather than an incitement to unthrift. Their gifts were not to be used to absolve children from supporting their parents. They were asked to undertake many disagreeable duties of inquiry, and to decide according to rule, and not according to the merits of each case—that

illusory euphemism so dear to the indiscriminate almsgiver. All this was extremely unpalatable to the old order of charity, and the advice of the candid friend became altogether unbearable, when the new Society had the effrontery to recommend to the older institutions eligible applicants for their bounty. With few exceptions, among which the Society for the Relief of Distress is honourably conspicuous, the older institutions refused to rally to this new proclamation of principles.

The new Society, after some hesitation and with many misgivings, felt obliged to become, in a measure, a relief society itself. The theory was and still is, that when a local committee of the Society has received and approved the demand of some applicant for relief, its first duty is to refer to the persons on whom their applicant may seem to have a claim, and to the institutions which give the relief appropriate to the circumstances under consideration. If this appeal is unsuccessful, the applicant has either to be abandoned, or the Society becomes bound to supply the relief from other sources. More or less deliberately the Society has gradually been forced to enlarge its responsibility in this respect.

Another feature in the new policy was its insistence that the charitable should not relieve without seeing that relief from all sources is adequate to maintain the applicant in decent comfort. To fulfil this condition laborious inquiry was necessary, and also a concentration of effort on the adequate relief of a few rather than the indiscriminate distribution of inadequate doles to a great crowd.

The new Society, moreover, early declared war on

that popular institution, the voting charity. It was the business of the charitable, they argued, to select their beneficiaries in some more reasonable fashion. The system of giving votes in exchange for subscription, though very useful for the purpose of raising funds, did not result in distributing the benefits of the charity to the most appropriate objects. Those who were influentially supported, and who could afford to spend most money in touting for votes, were the successful candidates for admission, and, whatever view we take of the objects and functions of charity, this result cannot be thought satisfactory.

Generally, then, it may be said, the propagandism of the new Society was not well received either by the Poor Law authorities or by the managers of the older charitable institutions. The Society was forced to undertake relief operations on its own account. Its apologists have always maintained that in its work it has endeavoured to act on the principles which should guide all administration of relief. (1) It has ever sought to come to an agreement with the Poor Law authorities. Success in this respect is obviously beyond its control, though in some instances it has been complete. (2) It has insisted on adequate inquiry, with a view of seeing (*a*) that public relief shall not be used to undermine self-care and the natural sympathy of relations and friends; (*b*) that adequate relief shall be given, so that applicants shall not be encouraged to persevere in a round of mendicancy in order to satisfy their necessities.

The question then arises, How far, in thus itself becoming a relief agency, has the Society succeeded

in avoiding the dangers deprecated by Mr. Denison. The work of relief administration is extremely engrossing. Just as the old charitable institutions found that the word "enough" was one which they would not allow to penetrate to the ears of their subscribers, so many of the committees of the new Society find themselves almost overwhelmed with demands for assistance. These demands seem to grow in proportion to the efficiency and the zeal with which the committees perform their task. The result is that the mere presence of a number of ladies and gentlemen, organised in the official form of a committee, and ready to bestow much time and trouble, and, if necessary, to raise considerable sums of money, in removing the embarrassments of the more respectable class of the poor, does tend to create a supply of such applications. Up to a certain point this may be desirable. At the same time, it is apt to throw into the shade the healthy absorbent influences of an expansive industrial system, to which, far more than to any philanthropic action, we have to look for the amelioration of our social condition.

The committees of the Society do not work on a uniform system, and it is not possible nor desirable that they should. We have indicated, above, the danger which, we believe, attends the work of a society which aspires to organise one branch of the *public*-relief administration of the country. In so far as it is dispensing public relief, it is bound to act with great self-restraint. It is the wish of the committees, however, to give their action, as far as possible, the character of *private* charity, and to a considerable extent they are successful. Almoners and other assistants attach themselves personally to the for-

tunes of those who are assisted, and, if the phrase may be allowed, the antiseptic properties of personal human sympathy keep wholesome the otherwise harmful qualities of public charity. It is not, however, always possible to give to the temporary and incidental relation between a public committee and an applicant for relief this personal and, in the highest sense, charitable character. The most useful gift to the poor is a sympathetic personal friendship; but it is cant to suppose that this relation can be created instantaneously upon an application for relief made by a stranger to a stranger. The worst curse that can be inflicted on them is a sympathetic and sentimental public body, which encourages them to leave the arduous task of building up their own independence in order to rely on the cheap, vicarious charity which it effusively distributes at some one else's expense. The difficulty which Edward Denison felt, and which made him speak so disparagingly of charity, was that it seemed to him impossible to prevent a public charity from being an incentive to the distress which it was designed to relieve. By severing his connection with the Society for the Relief of Distress, and by entering into personal relations with the poor among whom he lived, he was able to give a human and personal character to his charity. The result, for which he hoped, was that charity so safeguarded would not be a cause of unthrift, that it would be applied for with moderation and received with reluctance, and that, from his own point of view, it would be given with a knowledge and supervision which largely enhanced the value of the gift.

The foregoing remarks indicate sufficiently the great

difficulties under which those who make themselves responsible for the distribution of public charity are obliged to labour. In a town like London, where the rich live in one quarter and the poor in another, and where men's engagements do not permit them, in any large numbers, to follow the example of Edward Denison, this difficulty of applying a fund which is largely of the nature of a public fund in a private and personal manner reaches a maximum. It is a difficulty which does not permit of an altogether satisfactory solution. When an applicant for relief comes before a committee of the Charity Organisation Society, and when the committee is satisfied that relief is necessary and that it should be given from charitable rather than from legal sources, its first endeavour is tc find some one on whom the applicant may appear to have a claim, *e.g.* a relation or an old employer. If this fails, the committee endeavours to interest some charitably disposed person in the affairs of their applicant. This is done by letter or personal conference. In the last resort they advertise in the journal of the Society, describing the needs and claims of the applicant, and ask for the necessary assistance. The assistance is thus asked for and given *ad rem,* and is not a donation *in vacuo* for charitable purposes generally. The result is not altogether satisfactory even when the donation is accompanied with personal superintendence and interest. It is not a solution arising spontaneously out of those sympathies of nature to which Chalmers alluded in the passage already quoted, but considering the entanglement and demoralisation caused by long-established misdirection of our charitable efforts, the policy of the Charity Organisation Society in this

respect is an honest and painstaking attempt to overcome a difficulty which has been pointed out over and over again by persons whose disinterestedness and authority it is impossible to dispute.

Contemporaneously with the work of Edward Denison and the foundation of the London Charity Organisation Society, two other events may be noticed. The first was a course of lectures delivered in Cambridge in 1870 and published in 1871, under the title *Pauperism: its Causes and Remedies*, by Henry Fawcett, M.A., M.P., Professor of Political Economy in the University of Cambridge. Professor Fawcett was an excellent type of a politician, now unhappily extinct, a man whose undoubted and genuine popular sympathies were too real to allow him to be a sycophant or a demagogue. His fearless honesty was never more usefully employed than in combating popular prejudice on the subject of the Poor Law. "Fully admitting," he says (p. 26), "that the Act of 1834 introduced many improvements, it cannot be denied that pauperism still exists to a most alarming extent. Much of the evil influence exerted by the old Poor Law upon the general social condition of the country still continues in operation. Further investigation will, I think, show that the chief reason why our Poor Law system continues to work so unsatisfactorily is that the Act of 1834 placed no effectual check upon the granting of outdoor relief. . . . The important question, therefore, to determine is, whether the granting of relief in this way constitutes an adequate check upon the improvidence, the indolence, and the self-indulgence from which almost the entire pauperism of a country either directly or indirectly arises." His own answer to this

question may be given in general terms: "Whilst outdoor relief continues to be granted, the position of those seems to be unanswerable who maintain that the evils inflicted by our Poor Law greatly preponderate over any advantages that can result from it. The legal claim which every one in this country possessed to be maintained out of the rates, represents perhaps the most perilous responsibility ever assumed by a nation" (p. 24). Then after commenting, much in the same way as had been done by the Poor Law Commissioners of 1832-34, on the impossibility of this ill-considered law being rendered innocuous by wise and restrained local administration, he states his view as to a remedy. It is the simple one of ending an abuse which all experience has shown to be past mending. "Bad as such a state of public opinion is, few, if any, indications of improvement in its tone can be detected. It becomes, therefore, essential that those restrictions upon pauperism which were introduced into the new Poor Law should be made obligatory instead of permissive."

Professor Fawcett had the ear of a large and influential public, but his authority was not sufficient to induce the legislature to face the difficulty of abolishing the common property which the poor are supposed to have in the institution of outdoor relief, and the situation remains unchanged at the present day.

A year before the delivery of Professor Fawcett's lectures, *i.e.* on 20th November 1869, Mr. Goschen, as President of the Poor Law Board, issued a valuable but unfortunately much-neglected Minute on Relief to the Poor in the Metropolis.

This document recites that "the published state-

ments of metropolitan pauperism have for some weeks past shown a considerable increase in the number of the outdoor poor, not only as compared with previous weeks, but as compared with the high totals of 1867 and 1868." This, the Board is informed, had arisen from the indiscriminate distribution of charity in past winters, and from the lack of agreement between the different relief agencies. It accordingly recommends that some steps should be taken to avoid the double distribution of relief to the same persons, and to secure the most effective use of the money distributed. It proceeds to discuss the separate limits of the Poor Law and charity with a view of securing joint action. It states the familiar maxim that the Poor Law should relieve the destitute. It gives, however, no practical definition of destitution such as is suggested on p. 136. It urges, it is true, that relief should not be given in aid of wages, and this condition, if rigorously applied by persons capable of bringing logical principles to bear upon practical administration, would give, perhaps, the same result, for unless the pauper is actually under the supervision of the guardians in one of their own institutions, they can have no certainty that the pauper is not earning wages. In any case the formula is vague and timid, and makes it possible to found on it a great variety of contradictory policies. It lays down more clearly and satisfactorily the objections to supplementations of Poor Law relief by charitable additions. If, for any particular reasons, charitable authorities wish to relieve a person in receipt of Poor Law relief, they should do so in such a manner as to render the pauper independent of such parochial assist-

ance. Adequacy of relief should be a rule with the Poor Law as well as with charitable agencies. The minute recommends an interchange of information, with a view of facilitating the division of labour suggested. "In 1867," it is pointed out, "great advantage resulted in the east end of London from the understanding established between the guardians on the one hand, and the representatives of the charities on the other, with the co-operation of Mr. Sclater-Booth, then Secretary of the Poor Law Board, and Mr. Corbett, Poor Law Inspector. At the time of the cotton famine the Poor Law authorities and the administrators of charities also worked together with great success. These precedents justify the belief that great benefit would result to the Metropolis if a cordial understanding could be arrived at, and arrangements made between all parties engaged in relieving the poor, based on practical and systematic rules, in conformity with the general plan sketched in this minute."

Following shortly after this minute, there began to be issued by the Local Government Board a series of very able reports condemnatory of outdoor relief, notably that by Mr. Wodehouse in the first report of the Board, and that of Mr. (now Sir H.) Longley in the third report. These documents are unfortunately buried in the profound secrecy of the official blue-books, but though they did not reach the general public, they made a deep impression on those who were seriously interested in the practical problem of Poor Law administration.

Encouraged to face the unpopularity of restricting the facilities of relief by the example and exhortation of

men like Denison, and supported by the great academic authority of Fawcett, as well as by the recommendations of the officials of the Local Government Board, a number of practical men in different parts of the country set to work to confine within narrower limits the havoc which was being wrought by the ordinary administration of the Poor Law. The most notable and successful experiments are those which were then inaugurated in three of the poorest unions of London. The motive which induced the Whitechapel and Stepney Boards of Guardians to restrict and then practically to abolish the custom of granting outdoor relief was not, in all probability, based on any perception of the desirability of instituting a division of labour with charitable agencies, though this argument appealed to some members of the Board, and in subsequent controversy has been very prominently put forward. The proximate cause was the intolerable condition into which the affairs of the unions were drifting under the old system. "Under this system," says Mr. Vallance, the clerk of the Whitechapel Union, "the administration was periodically subjected to great pressure, so much so that the aid of the police had not infrequently to be invoked to restrain disorder and afford necessary protection to officers and property. Police protection was even required for the guardians during their administration of relief." Describing the reform in a pamphlet drawn up for the information of a Parliamentary Committee, Mr. Vallance has characterised the old system as one which fostered pauperism, encouraged idleness, improvidence, and imposture, while the relief given in no real sense helped the poor. Voluntary charity had no

definite obligations as distinct from the Poor Law. "This condition of things the guardians resolved to amend. Looking forward to the ultimate possibility of laying down a broad distinction between 'legal relief' and 'charitable aid,' and of interpreting the former as relief in the workhouse or other institution for the actually destitute, and the latter as personal sympathy and helpful charity, they began by restricting outdoor relief" first in one and then in another direction, till gradually it was found that the whole outdoor pauperism had melted away without any increase to indoor pauperism. Simultaneously, efforts were made "to bring the more deserving within reach of helpful charity." Somewhat later (its first report is dated 1878) an association known as the Tower Hamlet Pension Committee was formed. The explanatory memorandum issued when the association was formed begins as follows:—"The reduction of outdoor relief which is taking place in various parts of the country has been very strictly carried out by the Poor Law authorities in certain unions in the east end of London. None who are conversant with the mischievous effects of a too liberal system of legal relief can feel themselves justified in objecting to what they believe will prove in the long run a salutary reform; at the same time a sudden and unexpected change may in some instances entail hardships, and it is to meet such cases that this committee has been formed. It is proposed to grant pensions to respectable and deserving persons, who have been careful and industrious, who are resident in unions where outdoor relief has been or is being abolished, and whose friends, if able to assist, are doing all they can."

The reform, commenced in Whitechapel and Stepney in the year 1870, was extended a few years later to St. George's-in-the-East. The experiment, or to use Dr. Chalmers's phrase, the demonstration, has been prolonged now over more than a quarter of a century. The following extract from the Report of the Tower Hamlet Committee for the year 1894 gives a fair illustration of the part which has been taken by the charitable agencies of the district:—"Since its foundation," says the report, "no single case which has been put forward by the local branches of the Charity Organisation Society, as suitable for a charitable pension rather than relief from the guardians, has ever been rejected for want of funds. For a time these pensions were found exclusively by this committee, but during the last few years the Charity Organisation itself and other agencies have taken a share of the burden." Then, after an allusion to the fact that the boards of guardians, chosen by the new electorate created by the Local Government Act, 1894, showed no disposition to reverse the policy pursued by their predecessors, the Report continues:

"The present seems therefore a proper occasion for emphasizing the fact that this experiment has stood the test of about a quarter of a century in three of the very poorest unions in London, that it has been successful in reducing pauperism, and that up to the present time it has met with no signs of disapproval from a popular electorate. Whatever be its fate in the future,—whether it is allowed to continue, or whether it be swept away by reckless and ill-considered legislation,—its success has been proved to demonstration. A strict administration of the law, though highly necessary, and not more

ınpopular than any other system, may very possibly ıot be proof against the arts of agitation. . . . This of :ourse is beyond the control of the committee; all it can lo is to record the facts. . . . The three unions now ınder consideration are probably the most unpromising ield for such an experiment that ingenuity could have levised. The casual labour of the river-side, the decay-ng industries of sugar-baking and shipbuilding, the ıbject poverty of a great part of the inhabitants, the arge number of common lodging-houses and shelters, are ıll circumstances inimical to an improvement in the ;ocial and economic condition of the people, yet the 'esult has not been unsatisfactory. If the example of ,hese three unions had been followed under the more avourable conditions enjoyed by the greater part of the :ountry, the problem of pauperism would have been vithin measurable distance of an absolute solution."

The concluding paragraph of the report states very :learly the spirit by which this experiment has been ınimated. The committee, it states, "has always put orward in the most prominent manner the fact that its vork is part of a large and carefully thought-out policy ›f reform. It is not an ordinary dole-giving charity. [he committee does not base its claim to support on the ıumber of persons it has relieved, but much rather on ,he number of persons whom the system in which it ›lays a humble part has been instrumental in keeping ndependent both of the Poor Law and charity."

This last consideration touches the point which is nost important in all this controversy. There would ›e but little merit in a policy which simply transferred , portion of the expense of relief from the ratepayers

to the supporters of voluntary charities. In the parish of St. George's-in-the-East during the old system between seven and eight thousand pounds per annum were being spent in outdoor relief. This expenditure ceased, and was replaced by a charitable expenditure which seldom reaches as many hundreds. The indoor relief has not largely increased, and such increase as there is can be certainly referred to the improved and more attractive infirmary accommodation which has been introduced not only there, but throughout London. The question may be asked: From what source have the people who were formerly supported by that seven or eight thousand pounds derived their maintenance under the new system? There has not probably been much, if any, increase in charitable funds, but they have been more systematically applied. The eight thousand pounds remained in the pockets of the ratepayers, many of them more thrifty but quite as poor as the pauper class which they are obliged to maintain; much of it reached the wage-earning class in the ordinary and honourable channels of trade; but most important of all, under the new system their own exertions, their own thrift and economy, became even to the pauper class a much more fruitful source of supply than had ever been the case before.

In the above quotation from the Tower Hamlet Pension Committee's Report it is remarked that the east-end unions are a very unpromising field in which to have tried this experiment. This is undoubtedly true. The authorities of these districts adopted this policy, partly because of the threat of impending financial ruin; and also the friends of Edward Denison,

the more disinterested promoters of the reform, in their missionary zeal, chose for the scene of their operations unions which notoriously were the most poverty-stricken in London. To see the full benefit of the system it is necessary to turn to a country union removed from the demoralising influences of a great town. The selection of Bradfield, a union in Berkshire, as the scene of a most remarkable demonstration in dispauperisation is due to accident. Mr. Thomas Stevens, a landowner in the union, was an assistant commissioner in the early days of the new Poor Law. He subsequently took an active part in the management of the union, but the reform was not pushed very far in his time, though it is understood that Mr. Bland-Garland, to whom the merit of dispauperising the union belongs, received his first lesson in the true principles of Poor Law administration from Mr. Stevens. Mr. Bland-Garland, when he first joined the Bradfield Board, was disposed to lean to the plausible and popular view that to increase the facilities for relief is a kindness to the poor. Mr. Garland, however, was a practical as well as a kind-hearted man, and he soon satisfied himself that the outdoor pauperism of the country, which at that date was in the proportion of about eight to one indoors, was a purely artificial creation, which in the best interests of the poor it was absolutely necessary to disendow. His views obtained, and retained to the end of his life, an ascendency at the Board. In this union there were, on 1st January 1871, 1258 paupers—999 outdoor and 259 indoor. On 1st January 1896, notwithstanding a considerable increase of population, the pauperism of Bradfield had fallen to 140, of whom 105 were indoor,

and 35 were outdoor. This extraordinary change was brought about in a comparatively short period. Mr. Garland was wont to maintain that the full benefit of a wise administration would not be fully experienced within one generation, nor until its adoption became the rule, and not as now the exception. While his and a few other unions are undoing the mischief done by centuries of maladministration, neighbouring unions continue the old plan of creating and fostering a large head of pauperism. When challenged as to what had become of the 1100 paupers who were disendowed by the policy which he advocated, Mr. Garland was wont to reply that he had made special inquiry about the provident associations in the district. He obtained statistics from some of those which possessed local centres, tending to show a large increase in their operations, and he claimed to be entitled to assume that this result was typical of what was going on in those larger provident associations, such as the Post Office Savings Bank, from which he could not obtain any detailed information. For the rest he could only say that the people continued to elect a board of guardians pledged to a maintenance of this policy ; there was therefore obviously no strong feeling on the subject, and from his own observation, and from assurances which he received from clergymen and others, he was satisfied that the people were better off and more contented than they had been under the old system.

With regard to the assistance given by voluntary charity, his remarks are of considerable interest. He found it impossible, and he does not seem to have thought it essential or even desirable, that there should be any definite organisation of charitable effort. This

may be necessary in towns—in the country it is not essential. In a perfectly spontaneous manner, encouraged occasionally by a private communication from himself pointing out how the poor-rate had declined from over 2s. to something under 6d. in the pound, both the relations of the poor and their well-to-do neighbours showed a greater readiness to assist in times of distress. So much so was this the case that comparatively small demand was made on a fund of about £100, which the chairman put aside out of his own pocket to be used for the relief of hard cases. The first year he spent about half this sum, and as time went on the demand made on him in his official capacity practically ceased.

We may now endeavour to sum up the lessons of the preceding narrative. We assume that true charity will desire not only to relieve pauperism, but to diminish it. To this end it is before all things necessary to enlist the active co-operation of the poor themselves. Their effort must be, not to qualify themselves for relief, but to make themselves competent to play an independent part in the economic society in which we live. It is necessary therefore to bar the way to public relief by adequate safeguards. We have described above the system which, in the opinion of those who have devoted most attention to the subject, is best calculated to weld existing materials into the form most likely to give this desired result.

Great facilities of obtaining relief, from a legal source, act as powerful factors on the imagination and conduct of the poor. If, in the struggle for their emancipation, we are to secure their co-operation, this incentive to

apathy and indecision must be carefully restrained. On this point the practical result of long and careful study has been summed up by Mr. Mill in the following terms. (*Pol. Ec.*, People's Edition, p. 221)—"They (the original Poor Law Commissioners) are the first who fully proved the compatibility of any Poor Law, in which a right to relief was recognised, with the permanent interests of the labouring class and of posterity. . . . It was shown that the guarantee of support could be freed from its injurious effects upon the minds and habits of the people, if the relief, though ample in respect to necessaries, was accompanied with conditions which they disliked, consisting of some restraints on their freedom, and the privation of certain indulgences. Under this proviso it may be regarded as irrevocably established . . . that the condition even of those who are unable to find their own support need not be one of physical suffering, or the dread of it, but only of restricted indulgence, and enforced rigidity of discipline. This is surely something gained for humanity important in itself, and still more so as a step to something beyond: and humanity has no worse enemies than those who lend themselves, either knowingly or unintentionally, to bring odium on this law, or on the principles in which it originated."

To put this in technical Poor Law language—we may say that the Poor Law Commissioners' discovery of the workhouse test enables the law to place adequate relief within the reach of all, without injury to the self-supporting instincts of society.

The necessity of imposing this test in the case of legal relief is repugnant to the benevolent, just as the

ecessity of inflicting pain is repugnant to the surgeon. he application of charitable effort, on the other hand, the assistance of the poor may be safeguarded by less ringent considerations, but, even here, it is not possible discard all precautionary measures. It is necessary to free" even this expectation of gratuitous support from its injurious effects upon the minds and habits of e people." How is this condition to be secured?

For the solution of this difficulty we are indebted to enison and to his imitators. His disparaging remarks th regard to charity have been quoted. They may matched with the following sentence from Mill: To give profusely to the people, whether under the ime of charity or of employment, without placing em under such influences that prudential motives all act powerfully upon them, is to lavish the means benefiting mankind, without attaining the object." *ublic* charities, endowed charities which are the mmon property of those who can qualify themselves recipients, are open to this criticism, but distinctly in less degree than a fund raised by taxation to be stributed by a popularly elected board. They are nited in amount and they are not equally the property all; they vest in the recipients, not as a matter of ght, but by favour of the administrators. Compared the Poor Law their influence is infinitesimal, but, such it is, it is necessary to guard against its "injurious ects."

Our narrative next led us to remark on a development of charitable effort which has not been so fully nsidered by the Poor Law Commissioners or by onomists of the school of Mill. The most desirable

and efficient quality of charity is privacy and spontaneity. This does not lend itself readily to statistical treatment. It is encouraged and called forth when it sees that legal and official charity is restrained in its action. Further, a most important and praiseworthy attempt is being made, deliberately and with all the difficulties of the problem in full view, to distribute funds, more or less public in their origin, in a private manner. The advantage of private over public charity is that the necessary check against "injurious effects" is introduced in a spontaneous and honourable guise. There is no objection in the human nature either of rich or poor to make a claim on an impersonal fund. This trait of character shows itself among the poorer classes, by men's readiness to resort to the Poor Law or to a public charity rather than to the private charity of their friends and relations. Similarly, malingering—*i.e.* the making of improper claims for sick allowances—is much more difficult to contend with in large centralised Friendly Societies with a common sick fund, than in the locally managed lodges of the affiliated societies, where the members of a lodge are all known to one another. It is this consideration also which has convinced every practically-minded man of the impossibility of a state insurance against sickness.

Similarly, in charitable matters, when a claim has to be made on a person, even the lowest and most degraded of mankind display an unexpected moderation. It is on this consideration that the usefulness of the co-operation between the Poor Law and charity mainly rests. It has been laid down by the Poor Law Commissioners, and it is impossible to resist the logic of their advice, that, in

any system of legal relief, it is necessary to make the condition of the pauper less eligible than that of the independent labourer. This is effected by the restraints on freedom imposed on those who are adequately maintained in some Poor Law institution. It is difficult, nay impossible, to introduce this condition of inferiority into the lot of those who are adequately assisted at their own homes by outdoor relief. An adequate maintenance, and no less can in humanity be given by the law, provided gratuitously at the applicant's own home, does put the recipient in a superior condition to those who support themselves, sometimes all too inadequately, from their own resources. It is impossible, therefore, to eliminate the injurious effects of a system of legal outdoor relief. When the relief is afforded from a charitable source, more especially when it is accompanied by personal sympathy and superintendence, the injurious effects are restrained by a very honourable feeling of moderation on the part of the poor themselves. By establishing the division of labour here suggested the stern disciplinary check of the Poor Law is, as far as domiciliary relief is concerned, replaced, and replaced effectively, by a sentiment which is honourable in itself, and which does not necessarily confine the generosity of the giver to any narrow and pedantic interpretation of a bare adequacy.

It is true, unfortunately, that the reform suggested is still in its early stages; it is impeded by the unwillingness of the predominant partner to abandon his right of patronage. It is supported in only a lukewarm fashion by the benevolent but indifferent public. There are many difficulties of detail about which fuller experience

and experiment are required, but with regard to the general principles on which the public relief of the poor should be conducted there appears to be little room for doubt. The present chaotic, and in many respects mischievous, administration is not due to any defect of theory in those who have applied themselves to an elucidation of the subject. Their conclusions have been before the public for more than a generation. As Burke has remarked of an inveterate fallacy of his day: Reason is fatigued; Experience has given judgment; but Obstinacy is not conquered. Occasionally administrators have acted on their advice, and invariably with a complete demonstration of the justice and universal applicability of their principles. No serious attempt has ever been made to question their truth, but it is all in vain; the same vicious methods of administration continue and, as far as present appearances show, will continue till the powers of local government in the direction of distributing legal charity are curbed and diminished.

When the Poor Law Commissioners in 1834 published their report, in which they set out in full detail the great reforms which had been worked in parishes like Southwell and Bingham, and when subsequently a Bill was introduced into Parliament to compel a certain measure of conformity to these examples, it was argued by many that this curbing of the discretion of local administrators was unnecessary. The public had now heard, it was said, of the success of the Bingham and Southwell plans, and would spontaneously adopt them; no legislation therefore was necessary. Happily this advice was rejected.

Men are quite ready to imitate useful innovations

when freely dealing with their own affairs, but a bad law is a thing which cannot be mended voluntarily. The whole burden of the Commissioners' report went to show how insuperable were the honest prejudices, the long-established custom, and the corrupt influences which stood in the way of reform, as well as how precarious was the maintenance of a wise administration when it was liable to be overturned at a moment by ignorance, passion, or interested intrigue. Professor Fawcett's opinion, uttered more than twenty-five years ago, as to the necessity of legislation has been quoted. There is, however, no chance of any politician undertaking a crusade in so unpopular a cause. England is the richest country in the world, yet by the perverted ingenuity of its legislation it seems condemned to remain the most pauperised.

So far we have dealt with the general aspects of the division of labour which ought to be observed as between the Poor Law and charitable agencies. There are, however, points of detail in which co-operation rather than complete division of labour should be the aim of administrators. Thus there are many things which a board of guardians cannot do, but which ought to be done in the interest of those entrusted to their care; a few of these may be mentioned.

Pauper children are sometimes orphans, and sometimes have parents who are not well-fitted to take care of their offspring. The guardians have no means of looking after such children when, having completed their education, they go out into the world. For the assistance of girls who are sent out under these conditions, there exists an excellent voluntary charity known as the

Metropolitan Association for Befriending Young Servants. Most of the girls brought up in Poor Law schools go into domestic service. The above-named society endeavours to get places for them, watches over their interests, and, as far as this is possible, endeavours to supply the advice and kindly offices which more happily situated girls would receive from their own homes. The visiting of schools and workhouses is a charitable office, which guardians as a rule are willing to delegate to suitable volunteers. The task also of attempting to find employment for the not very large class who, being able and willing to work, have yet found their way into a workhouse, is one which can most successfully be undertaken by volunteers. The visiting of the aged and infirm wards of a workhouse, and the organisation of some light employments for the inmates, is a kindly act undertaken by ladies in connection with what is known as the Brabazon Scheme. These, and many others which might be mentioned, are useful supplements to the work of the guardians. Efforts of this kind are, for obvious reasons, more usually connected with unions where some attempt is being made to reduce the outdoor relief. The guardians are in such places anxious to mitigate as far as possible the severity of a system which they believe to be salutary.

The principles of successful administration of public relief, as indicated in the foregoing pages, have been worked out by men who, though actuated by the warmest sympathy, are nevertheless convinced that, in these problems, passion is out of place. They recognise that, in matters philanthropic, there is a paradox, akin to one which has been noted elsewhere and termed

the paradox of the actor. Though in imagination the great actor should explore all the moods and feelings of the character which he personates, the actual presentation of his part must never be dictated to him by passion, but rather he must choose deliberately and coolly the movements, the gestures, and the tones that are suggested to him by the rules and genius of his art. So the philanthropist, in the truest sense of the term, will not allow his judgment to be obscured by a hysterical sensibility. Study and observation have taught him that civilisation has been created by the discipline imposed on the units of which society is made up, by the restraints as well as the more positive mandates of religion and the rules of right conduct. Though desirous of relieving misery and want, he knows that permanent improvement can only be reached by the wider spread of those habits of personal responsibility which are learnt through the discipline of experience.

CHAPTER IX

MEDICAL RELIEF AND HOSPITAL REFORM

ONE larger branch of charitable work is at present the subject of considerable controversy; some account may therefore be given of the difficulties which beset the administration of our great voluntary Hospital system.

There are many interests concerned in the question.

1. There is first the interest of the sick poor.

2. There is the interest of the medical profession, to which the hospitals are great schools of practice.

3. There is the interest of the local practitioner in the poorer parts of great towns.

4. There is the interest of provident medical and sick insurance associations, on the wise development of which the medical service of the poorer classes largely depends.

5. There is the interest of good administration generally, which requires that there shall be some intelligible division of labour between the infirmaries and dispensaries maintained by the poor-rate, and the hospitals maintained by endowments and charitable subscriptions.

These interests are at times represented as conflicting, and obviously they require for their reconciliation

much consideration and ingenuity. The present position, it is generally admitted, is not altogether satisfactory.

"A hospital in old times" (*i.e.* about half a century ago), says Mr. Timothy Holmes, F.R.C.S.,[1] himself a distinguished surgeon and an influential member of the governing body of St. George's Hospital, "was a place for the gratuitous reception of cases grave enough, in the judgment of its officers, to need treatment in the wards. These, when sufficiently recovered to leave the house, received out-patient treatment till their case was completed, and beyond these there were no out-patients unless occasionally the medical officers of the hospital chose to oblige their friends in the neighbourhood by giving opinions on the cases of persons specially sent to consult them." This arrangement satisfied, it is to be presumed, the requirements of the medical school. Fifty years ago there were no Poor Law infirmaries separate from the workhouse; but there were wards of the workhouse set apart for sick and infirm people, where they were treated in a manner that would now be considered very inadequate. The distinction, however, between the class of case to be treated in a hospital and that to be dealt with by the Poor Law was made tolerably clear by reason of the action of the hospital staff. Grave cases requiring treatment in the wards were admitted to hospitals as far as the accommodation permitted. Destitute persons suffering from sickness that was not grave were left to the Poor Law. Owing to the limited amount of hospital accommodation, all grave cases could not be dealt with at hospitals, and many such had, no doubt, to have recourse

[1] A paper read before the Council of the C.O.S. on "The Pay System in Hospitals" (*Charity Organisation Review*, April 1897).

to the Poor Law. The division of labour was only roughly marked out, but there was a division. The two agencies did not wantonly compete against one another in the same area. "The first departure from this system," Mr. Holmes continues, "was made (possibly in the lifetime of persons now living—certainly in the memory of some very recently dead) when the assistant physicians and surgeons instead of being, as formerly, appointed to assist named persons on the senior staff in their hospital duties, were put in charge of out-patients who had never been, and were never likely to be, in-patients. Thus at St. George's, Mr. Babington (Lord Macaulay's uncle) was in 1829 appointed the first assistant surgeon to the hospital; those who, like Sir B. Brodie, had been so-called previously having really been assistants to particular surgeons, as he was to Sir Everard Home. Now began that lamentable competition, which still continues, between different hospitals in the number of their patients. This number was easily accepted by the public as a test of the activity and usefulness of the hospital; and as the number of in-patients cannot vary very much for the same number of beds, this competition could only be carried on by throwing open the doors of the out-patient department wider, and disposing of the cases by hundreds an hour." Not only the general public, but the authorities of the Hospital Sunday Fund accept these numbers as evidence of merit, and allow the share of the fund allotted to each hospital to be, to some extent, determined by this consideration. The in-patients in London hospitals, of which there are twelve with schools and ninety without schools, amount to about 87,000 during the year; the out-patients to about

1,299,000. The Poor Law infirmaries, of which there are twenty-six, deal with 10,500 patients daily, and in addition there are 44 Poor Law dispensaries giving away gratuitous medical relief to an enormous but unascertainable amount.

The Poor Law infirmaries have of recent years been greatly improved; indeed in every respect but one they are, in most metropolitan unions, quite equal to the hospitals. They have not the advantage of the presence of the leading surgeons and consulting physicians. They are, however, adequately staffed for the treatment of ordinary ailments, and there is nothing to prevent the authorities in more critical cases from seeking occasional assistance and advice from the hospitals. This is done in many cases.

Now the persons who frequent the out-patient department of hospitals are, for the most part, suffering from comparatively simple complaints, which in the usual way would be treated by the general practitioner. The only classification attempted in all this mass of gratuitous relief is that a portion of those suffering from grave diseases are admitted into hospitals as in-patients, and even these admissions are selected in a haphazard way.

As to the quality of the work done in the out-patient department, Mr. Holmes's opinion is as follows: "As our out-patient departments are now organised, the patients get an average of the medical officers' time which is popularly reckoned by seconds rather than by minutes—at any rate, is very short. They get a bottle of physic or some lotion or ointment, but there is no possibility of hygienic treatment, and no provision of nourishment or stimulants. Now much of the sickness

being due to intemperance, insufficient clothing, bad habits, bad food, and poverty, is not susceptible of this rough and ready treatment, but, as far as it is within the reach of treatment at all, must be treated at home. The medical officers of Poor Law dispensaries have the advantage over the out-patient departments that they can order nourishment and stimulants, and there can be little doubt that a large proportion of the out-patients should go there."[1]

If this be true, and the facts are not seriously disputed, it is obvious that such an organisation of medical service cannot be satisfactory to the poor.

Next, the general practitioner complains that a class of practice with which he is fully qualified to deal is taken from him. At the annual meeting of the British Medical Association in Carlisle, in July 1896, Mr. A. Brown Ritchie, M.B., C.M., Honorary Surgeon to the Hulme Dispensary, gave expression to the views of a section of the medical profession, and propounded the question, When is a Charity not a Charity? He gives three answers. When an employer gives a donation to a hospital and then expects that all his employees shall be treated gratuitously, though the majority of them are perfectly able to pay the ordinary medical fees. Secondly, when a donor receives in return for his subscription a certain number of "recommends," which entitle him and his friends to gratuitous treatment. "The third example is where 'recommends' are sold to patients applying for them, and without the intervention of the pseudo-philanthropist. This is not philanthropy: it is cheap doctoring—cheap to such an extent that these institutions

[1] *British Medical Journal*, 1895, vol. i. p. 1469.

compete with the sixpenny doctor and the provident dispensary, yet dear enough to pay the expenses of the institution without remunerating the medical staff." His conclusion is that the medical profession is a tool in the hands of lay speculators in philanthropy.

At the same meeting Mr. H. Nelson Hardy, F.R.C.S., Edin., Divisional Surgeon Metropolitan Police, dealing with the statistics of one of the great London hospitals, points out that each of the dozen assistant physicians and assistant surgeons attached to the hospital must have dealt, on an average, with 12,000 patients during the year. He went on to remind his audience that, at their last meeting in London, grave censure had been passed upon doctors who joined themselves to a certain class of Medical Aid Association, on the ground that they undertook the care of more patients than they could properly attend. One medical officer to an association of this kind was asked how he could possibly attend to 4500 cases in the year. A committee of the General Medical Council appears to have considered the question of the Medical Aid Associations. This committee, though disapproving of the conduct of doctors undertaking tasks which are impossible, was of opinion that there was nothing illegal in their action, and Dr. Wilks, a distinguished member of the profession, is reported to have said that "the committee saw that this principle was very far-reaching, even including the assistant physicians and surgeons to out-patients in many London hospitals."

"It was hardly, of course, to be expected," Mr. Hardy goes on to say, "that a body like the General Medical Council, consisting chiefly of consultants, most of whom have climbed to eminence on the hospital ladder, starting

from the out-patient room, should express their strong disapproval of their successors on the lower rungs, to whom the principle they had laid down for medical-aid men was seen to reach, or should consider that the one set should be ranked with those guilty of misdemeanour as well as the other. After all it is well known that 'That in the captain's but a choleric word which in the soldier is rank blasphemy.'"

The gravamen of the charge is that the hospital authorities, identified for the purpose of this argument with the leaders of the profession, deprive the general practitioner of the custom of patients in such numbers that they cannot treat them adequately, and that they then turn round on the humble officer to a Medical Aid Association, and find him guilty of a misdemeanour which they are largely practising themselves.

Mr. Hardy's remarks do not apply to all the leaders of his profession. The unsatisfactory nature of the position is widely recognised by many of the most eminent surgeons and physicians. This frame of mind must precede a change, but, in justification of Mr. Hardy's impatience, it must be confessed that reform is slow in coming. Mr. Hardy has his suggestion to make as to the line on which reform is desirable.

"Turning to the remedies suggested, there can, I think, be no doubt that decentralisation should be the great watchword of reform. Hospitals, either in London or elsewhere, ought not to attempt to treat as out-patients all the men, women, and children who may apply from any part of their city or town or suburbs.

"The ideal system would be a complete network of local dispensaries, Provident or Poor Law, treating slight

cases on the spot, so that no working man or woman need travel far for medical advice. When the case presented unusual symptoms, such as in private practice would lead to a consultation, the local doctor should be able to send the patient to a hospital either for an opinion or for admission. The physicians and surgeons of the central institutions being relieved of the crowds which now press upon them, could bestow time, thought, and care on the selected patients forwarded by the local doctors. To promote this reform, the easiest means would be to cease at once to supply medicines in the out-patient departments. The crowds would soon drop off if this were done. There would be fewer thousands for hospital secretaries to brag about, but no other mortal under heaven would be injured thereby. If the medical staff of hospitals refuse to assist in the promotion of such a reasonable reform, it would be quite feasible to bring a considerable amount of moral pressure to bear upon them through the united action of our Association. It has been decided in several places not to hold professional intercourse with the medical officers of Medical Aid Associations, and one of the branches of our Association has even resolved not to admit them as members. Personally, I think this is going a little too far, and that for the present it would be sufficient to debar those who act contrary to the general good from holding office of any kind, either in the branches or the Association generally. If this rule were applied impartially to those who are the chief upholders of hospital abuse as well as to the medical-aid men, we should soon see a diminution of what has been well described as a gigantic abuse."

The "boycott" of those medical men who attach

themselves to medical associations, alluded to in the above quotation, requires a word of explanation. It can best be given by quoting the following sentences[1] used by medical gentlemen in the course of a debate following a paper read by Mr. C. H. Warren, Secretary to the Metropolitan Provident Medical Association. Thus one doctor "advised medical men to have nothing whatever to do with any association in which the laity, especially the clergy, sat upon a committee and dictated to them." Another thought "that the members of the Provident dispensaries should be taught to know that the medical men were not being adequately paid for their services." The reader of the paper complained that the public was apt to confuse such associations with genuine Provident associations. The Medical Aid Society is a business concern carried on for purposes of profit, which is gained at the expense of the medical man, without any of the safeguards attaching to the Provident dispensary.

The difficulty has perhaps been given an exaggerated importance. Working people are becoming alive to the necessity of procuring medical attendance for themselves and their families, and there is a disposition to drive a somewhat hard bargain with the medical men whose practice lies among this section of the population. This complaint is sometimes raised even against the Friendly Society, and obviously the pressure of bargaining will make itself felt more acutely when a trading insurance agency intervenes between the medical man and the insured.

The solution of the difficulty is considerably impeded

[1] These are reported in the *Charity Organisation Review* for February 1897.

by the eleemosynary element which has been imported into it. The poorer classes do not wish to depend on alms for their medical treatment any more than for their other wants. They have attempted to meet the risk of destitution in sickness by provident insurance, and the principle has been extended to medical attendance. It is probable that the manual wage-earner is not sufficiently ready to pay adequately for the scientific service of the medical profession, and that the less-qualified practitioner, under this pressure, is at times willing to undertake more than he can honestly promise to perform. This is an evil which can safely be left to cure itself. Working people will soon learn that if they wish to provide efficient medical attendance by means of insurance, they must pay an adequate premium. It will be more difficult to persuade the "speculative" philanthropist that his intervention in the controversy is frequently mischievous. The Medical Aid Association of the type condemned is the counter competition, organised, or at least supported, by the less scrupulous members of the profession, to meet the gratuitous doctoring of the out-patient department.

The Provident dispensary proper has to compete against both the inadequate Medical Aid Association and the out-patient department. Its attempt to arrange a system of medical service, which shall be honourable to the medical profession and yet within the means of the working-class, is pursued amid great difficulty.

"The main recommendation," says Mr. Timothy Holmes, "of these dispensaries is, as Sir C. Trevelyan so often and so well pointed out, that they give a poor man the services of a family doctor, who knows the

history and constitution of each member of the family, advises them in all their habits and occupations, and visits them at home when necessary."

It has been proposed that the out-patient department should be in some way converted into a Provident dispensary. This suggestion, Mr. Holmes unanswerably points out, cannot be combined with the foregoing condition. "The hospital out-patient department ought, on the contrary," Mr. Holmes continues, "to be mainly a consultative institution, and its chief function, towards those who have not been in-patients, should be to assist their ordinary medical advisers in any difficulty or emergency. . . . A hospital is not intended for the home treatment of the poor."

Equally conclusive is the same eminent authority's criticism of Sir H. C. Burdett's proposal to introduce the pay system into hospitals generally by requiring patients to pay the charge of their maintenance, the medical treatment being still gratuitous. The adoption of any such plan would result in a sham. Many persons would undoubtedly be found willing to pay for their bread and cheese "on the terms of paying for the bread alone; and in the same way a man who has medical treatment and maintenance in a hospital may be assumed to be willing to purchase them by paying for the maintenance only; but is it honest? It hardly seems so."

Sir H. C. Burdett's suggestion is that the hospitals shall be divided into wards priced according to their scale of comfort. This Mr. Holmes does not find practicable. "Hospital wards must all be equal in point of sanitary perfection and in point of medical skill; the patients,

if they are really in need of hospital treatment, must be chiefly confined to bed, and the small differences which upholstery might make between one ward and another would not, in the view of any person of common sense, be worth paying for, so that the tendency to rate one's self at the cheaper price would be irresistible."

In the hospitals, as at present organised, the services of the medical profession are given in return for a valuable, though indirect, consideration. But on such a a point it is better to quote the language of Mr. Holmes. "Talk as we may about the boundless charity of the medical profession, their zeal in rendering gratuitous services, etc., every one must know that the labours of hospital physicians and surgeons, though not requited directly in money under our present system, are requited in reputation, rank in the profession, and the opportunity of acquiring ever-increasing knowledge. If the status of the medical officer is to be changed, and his remuneration to be a pecuniary one, that remuneration must be adequate or the work will be ill done."

On the general question of payment, Mr. Holmes submits five conclusions. Taken in connection with the recommendations submitted in Mr. Hardy's paper, they cover the greater part of the ground. They are as follows:—

"(1) Institutions are necessary in large towns, where patients can be received for medical or surgical treatment on payment.

"(2) These institutions should be separate from the public voluntary hospitals.

"(3) They should be managed on commercial principles so as to secure an adequate return on the capital

employed, and an adequate remuneration to the medical attendants.

"(4) The reception of paying out-patients at general or special hospitals is undesirable.

"(5) Provident dispensaries, properly organised and well-managed, would be most useful under a reformed out-patient system; but it is very doubtful whether such institutions ought to be incorporated with general hospitals."

Of the nursing homes recommended by Mr. Holmes there are already a considerable number for different ranks of society, which pay their way successfully.

We are now in a position to sum up the result of the controversy.

Except in so far as the requirements of a hospital as a school of teaching are concerned, it is not fair that medical men should be called on to give their services on gratuitous or eleemosynary terms. For ordinary medical treatment, it may be assumed that the proper service is that of the family practitioner. His services will be remunerated among the upper and middle classes in the ordinary way. When we come to the poorer classes there seems no reason, but rather the reverse, why his remuneration should not be provided by the method of insurance, on terms honourable to both parties. In this connection we may indicate the nature of such terms by the following quotation from the last report, 1896, of the Metropolitan Provident Medical Association. "It pointed out that while the interests of the provident members should be carefully maintained, it was absolutely necessary that the rights of the medical profession should be safeguarded by the enforcement of a

medical examination of candidates for admission to provident membership, and insisted on the adoption of a fair wage limit, on the suppression of touting and canvassing in the interests of individual doctors, and on the representation of the Medical Officers on the Committee of the Provident dispensaries."

In cases where the extraordinary advice of consultants is required, it is suggested that for the poorer classes, who are unable to pay the legitimately high fees paid to the leading surgeons, some access to the wards of the great hospitals ought to be given through recommendation by the general practitioner or the Provident dispensary. This, presumably, would be one of the channels through which the efficiency of the medical school would be maintained. Such treatment would, of course, be gratuitous. It is absurd to pretend that, for the mere payment of maintenance, patients, treated by surgeons whose fee to their own patients is perhaps 100 or 200 guineas, should be held to be paying for their medical treatment. The expense of ordinary medical attendance is regarded as a normal one in upper or middle-class families, and there would be little or no convenience in providing against it by insurance. Extraordinary occasions, such as a severe surgical operation, or prolonged and serious illness, stand on a somewhat different footing. It is submitted that the requirements of the public in this respect are worthy of the considerations of insurance experts. The difficulty of insuring a risk which cannot be very accurately defined is obvious, but it ought not to be insuperable. Attempts have been and are being made in this direction, but the system is not widely adopted. It is conceivable that a well

organised system of insurance would considerably diminish the unfair demand which is now made on the medical and surgical profession for gratuitous treatment. In the meantime, the requirements of those who are unable to pay the high fees required in such circumstances are met by the accident that, for the purposes of a medical school, the highest professional talent is available to treat a large number of patients gratuitously.

In the scheme of reform propounded by Mr. Holmes and the other gentlemen whom we have quoted, the out-patient department, if not abolished, would be curtailed; and for those who could not or would not pay the fees of the poor man's doctor, or the insurance premium of the Provident dispensary or club, there would remain the Poor Law infirmary and the Poor Law dispensary.

To return, after a digression which it is hoped will not be thought irrelevant, to the particular subject of this treatise, the relation of the State to charity, it may be noted that the special question of medical relief differs in one respect from the larger question of the general relief of the poor by charitable and Poor Law agencies. In the latter case the key of the situation and the control of the possibilities of reform lie in the hands of the Poor Law authorities whom we have called the predominant partners. In the reform of medical relief, the main obstacle to the adoption of a rational subdivision of labour as between the Poor Law and voluntary agencies consists in the abuses of the out-patient departments of our great hospitals. Here it may be said that not the Poor Law but the voluntary agencies are the most powerful cause of the prevailing confusion.

There is one proposal in connection with hospitals in London which is now attracting a considerable amount of attention. It advocates the formation, in the interests of reform, of a central authority representative of the great hospitals and of other bodies and persons interested in the question. The authority of such a Board would obviously depend largely on the extent to which it was able to wield the power of the purse. A useful hint was thrown out by Sir William Broadbent in a speech which he made in support of the principle of a Central Board. He said: "It had occurred to him, as well as to every one there, that there was a possibility, at any rate, of a gigantic scheme of collecting money for the benefit of the London hospitals on the part of the Prince of Wales in celebration of the Queen's reign. . . . He hoped the rumours they heard might turn out to be well founded, and that the scheme might have every success. If that money was collected there must be a committee of distribution. That committee would be in a way a Central Hospital Board *ad hoc*, for that particular occasion; it must obtain information from all the hospitals, and distribute its funds, not merely in relation to the apparent necessities of the hospitals, but with some recognition of the merits of the different institutions which were to be supported. It seemed to him possible that that Central Hospital Board, as it must be for that occasion, might turn out to be the Central Hospital Board which they all desired to see" (*Charity Organisation Review*, Feb. 1897). How far the distribution of the Prince of Wales Fund for the London Hospitals can be used as a lever for the enforcement of reforms remains to be seen. The suggestion of an authority of the emin-

ence of Sir W. Broadbent will, it is hoped, have weight in the decision which is ultimately adopted.

At the same time, in the interests of the independence of the poor, the question of Poor Law medical relief is one that requires to be carefully watched. The "doctor's order" is often the beginning of a long career of preventible pauperism, and the conscientious guardian, who undertakes the ungrateful task of stemming the beginnings of pauperism, will find this insidious entrance to the pauper habit one of the most difficult to guard. In some unions medical orders are given out by the relieving officers as a matter of course, and if they are reported to the Board at all, it is in the most perfunctory way. In other unions medical relief is carefully scrutinised, and is brought before the Board in the same way as any other form of relief. In the union of Bradfield already quoted, it was observed that the persons who came for gratuitous medical relief from the poor law were often earning exactly the same wages as the numerous class who belonged to the local Friendly Societies and Provident Associations. It was, argued the Guardians, manifestly unfair that the provident man should be obliged to pay for his own medical attendance and also his share of a rate to provide medical relief for his less provident neighbour. This was clearly to put the pauper in a better position than the independent labourer. They accordingly determined to grant all medical relief on loan. This course, which is in keeping with the general wise policy of the Board, has produced the happy result that the whole union is, more or less fully, medically insured, and that the granting of medical relief from the rates is now very exceptional. It may

be hoped that, as the plan has been in force about a quarter of a century, it has outlived the short-sighted and shallow objection, that it is cruel to urge the poor to make these economics out of their scanty wages. To the poor themselves the price which they pay for this independence is not more than that of a few glasses of beer. Further, by joining the Friendly Society movement, the labourer is not only insured against some of the most serious risks of life, but he participates in a business organisation of the most interesting and elevating character. The technical difficulties of the subject supply exactly the sort of intellectual stimulus which is most wanted by a class engaged in manual labour.

To the economic student, the successful laying of such foundations of independence means much more than this, and is full of most hopeful augury. It is the gradual building up of an effective demand for the decencies and comforts of civilised life, and is a prelude to better wages and better conditions of toil. Arthur Young's paradox that the way to improve agriculture is to raise rents has its counterpart here. The way to raise wages is to respect the principle of personal responsibility. A higher rent supervening, as in the case Arthur Young had in his mind, on the slovenly ineffectual cultivation of the unenclosed field, did not of course in itself cause an improvement in agriculture, but the increased security of tenure and the necessity for exertion undoubtedly produced the advance which he saw. In the same way other forms of economic competence are built up and stablished by allowing the labourer, more and more fully, to meet his own responsibilities. There is no institution of which the working-class is more justly

proud than the Friendly Society, and it is only one among the many associations which enable the poor man to meet his responsibilities. The successful development of these institutions only became possible when the encroachment of the poor law was checked by the Poor Law Amendment Act of 1834. Human nature has planted, even in the poorest, a healthy and ineradicable love of independence. Dependence has happily no power to satisfy. The power of civilised communities to absorb additional numbers in their industrial population appears to be almost illimitable, as each successive census shows; yet it is admitted that the general condition of the population continues to improve. There is therefore no inherent incapacity in the character of the poor, nor is there any insuperable obstacle to improvement in the existing constitution of society.

Yet, these favourable conditions notwithstanding, every step in the emancipation of the poor, every fresh assumption of hitherto undischarged responsibility, has been and will be stubbornly opposed, not by the poor themselves, but by middle-class sentimentalists and thoughtless politicians. The danger lies in the excessive sentimentality of those who, to quote the words of Mill, are not satisfied with "the guarantee of support" which is given to all, "ample in respect to necessaries," but "accompanied with conditions." The effect of such an attitude is in every way injurious. To remove from the working-class, by any extension of public relief, the necessity of overcoming its responsibilities is to knock away from under its feet the ladder by which it has risen. To cast discredit on and destroy the safeguards with which experience has fenced the access to public

relief is to condemn the poor to a prolonged sentence of dependence. As Mill has justly said, "Humanity has no worse enemies than those who lend themselves either knowingly or unintentionally to bring odium on this law or on the principles in which it is founded."

The hope of obtaining legislative reform, such as Fawcett demanded in 1870, must depend on the willingness of statesmen to educate, on this subject, the democratic sentiment. It would not perhaps be so difficult a task as might at first sight appear. Among the working-class generally there is the strongest objection to asking for charity. It is this honourable feeling which explains the moderation of the claims made on a charitable fund, unless it is manipulated in a more than ordinarily perverse fashion, as was the Mansion House of 1886. At the same time there is in the popular mind a vague and ill-defined idea that there is some deep injustice in the present distribution and tenure of property. This feeling assumes a variety of forms. It occasionally, but not always, seeks to find redress through the Poor Law, or through some modification or extension of the Poor Law; but such demands are ever accompanied by a protest that what is wanted is not charity, legal or otherwise, but the yielding of some natural right which is supposed to be by birth the privilege of all. The acknowledgment of any such right, except by way of legal charity under such conditions as the grantors see fit to impose, is, though perhaps in a mild and incipient form, a revolutionary attack upon the received theory of property. Sometimes it takes the shape of asserting a right to remunerative employment, the *droit au travail* which proved so dangerous a gift to

the Parisian populace in 1848. Sometimes it demands that the name pauper (a word whose decadence has followed but, of course, has not caused the decadence of the thing) shall be purged of any opprobrious taint, at others that gratuitous or semi-gratuitous pensions shall be furnished for the aged. Some such concessions have already been made, and the appetite for others grows apace.

The middle-class politicians who favour such measures do so in the belief that they are acting liberally and charitably toward the less fortunate class. They have developed what is known as the doctrine of ransom. It is not in this spirit that the workman, whose opinions are tinged with a socialist colouring, is willing to accept the favours conferred. Such concessions will not satisfy. While to the practical politician they appear to be a charity, the exact nature of which he is not at pains to define, to the socialist proletariat they are the first instalment of a great inheritance which they consider to be their due, and into the full possession of which they are logically justified in seeking to enter. In their assumption that happiness and comfort are the birthright of all, there is no place for the idea of charity. The State may be so organised as to give to all their rights, but charity is a species of injustice for which they find no place in their political theory.

If we are to believe our socialist friends, we are now at the parting of the ways. Hitherto the advance of civilisation has been characterised by the disintegration of common ownership. More and more, distribution has come to be effected by private appropriation and exchange. The philanthropist who has accepted this

condition as inevitable has hoped that in time the proletariat would itself be clothed and protected by the advantages of private property, for he can see no impassable gulf fixed between manual labour and property. The optimist will even declare that this gulf is visibly growing narrower, and he will demand that legal and voluntary charity shall not be used so as to dissuade the poor from attempting to bridge what remains of it. All this the socialist seeks to reverse, and he boasts, not without truth, that he is receiving much support from the practical politician. He deems it possible to create in a great variety of ways, not new charities legal or voluntary, but a number of new forms of common tenure.

Is the distinction more than a verbal one? Under the socialist's guidance it might be so; he would make the world a new heaven or a new hell, and mankind either gradually or *per saltum* might be educated into new habits and into a new character. But the *bourgeois* politician has no intention of proceeding to these lengths. The new tenures of socialism, which he is helping to establish, are, in his eyes, merely charitable jettisons thrown out to lighten the ship, which, as far as his fortunes are concerned, will continue to be navigated on the old lines. The socialist believes that, in face of the new tenures, the individuals who compose society would undergo a discipline and an education which would mould them to an appropriate form. The apologist for modern civilisation, as ordinarily understood, believes that its discipline is bringing about a wider distribution of property, mainly by a ceaseless insistence on its necessity, and by the effect which this is exercising on

human character. The political lover of an illogical compromise, while he will not make an aspiring leap into the darkness of a socialist adventure, does not seem to see that by means of his new charities he is planting an uneducating influence of indiscipline in a still imperfect process of social development which he will neither destroy nor yet suffer to grow and to ripen.

Mr. J. Morley, in the *Nineteenth Century* for May 1896, commenting on Mr. Lecky's remark that the sense of right and wrong is the basis of respect for property and for the obligation of contract, exclaims, "This will never do: it begs the whole question. The socialist believes that he can make an unanswerable case the other way, namely, for the proposition that the unsophisticated sense of right and wrong, so far from being the root of respect for property, is hostile to it, and is at this moment shaking it to its foundation all over the modern world."

The issue is fairly stated. Our present policy is one of drifting. It is not, of course, to be expected that political affairs can be regulated in accordance with pure theory, but it does seem strange that our legislators seem so little to realise the stupendous issue with which, as Mr. Morley remarks, the whole modern world is now confronted. The amelioration of society, as far as its material comfort is concerned, is to be brought about in one of two ways: either by the institution of some form of common tenure which will provide an equal or at least an equitable enjoyment for all, or by a process analogous to what is called the pulverisation of the soil among a peasant proprietary, which will distribute, on the strictly private tenures already recognised in the

civilised world, some share in the ever-increasing wealth of the community to all who exert themselves to attain it. Compromises between these two extremes we probably must have, in a country which is governed empirically and not theoretically; but in adopting them we should not forget that we are, thereby and to that extent, uneducating society for the only alternative courses which seem to promise it its desire.

THE END.

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