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HOW FRANCE IS GOVERNED

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BY

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OF THE FRENCH ACADEMY AND
PRESIDENT OF THE REPUBLIC

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CIVIC RIGHTS AND DUTIES

I

CIVIC RIGHTS AND DUTIES

UNIVERSAL SUFFRAGE.

THE conception of the State, in modern France, is based upon the principle of national sovereignty. France is a great democracy, which rules and administers itself. But it rules and administers itself by means of representatives. We are therefore led to examine representative government. How are the mandatories of the nation appointed—who are the electors—who may be elected—how long has the right of suffrage been accorded to the whole body of citizens—and how is it exercised? To reply to these questions we must briefly trace the history of modern liberties. In comparing ancient institutions with those of to-day we shall not refrain from demonstrating in what these latter are superior to the former. A historical narrative which, under the pretext of neutrality, should ignore accomplished progress would be dry and unmeaning. But while we

have a right to prefer the present to the past, and to explain the reasons for our preference, we must weigh the past without prejudice and without passion. Things that appear to us to-day as antiquated, harmful, and incomprehensible very often had their *raison d'être* in other times. France has lived through many centuries; has evolved; has adopted new manners, new ideas. Let us be of our own times; let us close our eyes to none of these novelties; but let us strive to detach what in ancient France was, in spite of all things, great and admirable. Let us speak of ancient France only with justice, even with piety.

The Constitution.

A sovereign nation, the mistress of its destinies, has, of course, the power to give itself a governmental organization, or, in other words, a constitution. During the last hundred and twenty years France has had a great many successive constitutions. She has not chosen them all freely, but she has loyally tested them all. After the war of 1870-71 the Republic had become the only form of government possible; it was finally established in 1875, and the Constitution which was then voted is, in its chief essentials, still in force. Although

the National Assembly decided in 1884 that this Constitution could never be divorced from the republican system, the fate of the Republic is not necessarily bound up with that of the present Constitution. Who can say whether the work of 1875 will still be extant in twenty or thirty years' time? In the meantime, it has resisted many assaults; it has enabled France to recover herself after disasters; it has given her security without and within, and has favoured the introduction of important reforms.

It will suffice if you understand what this Constitution is and how it works. We will therefore pay a visit together to the President of the Republic, the Ministers, the Chamber, and the Senate. We shall surprise them at their daily tasks; we shall observe the duties and the functions of each. We shall thus learn what the laws are, how they are made, and how executed.

Order and Justice.

Certain of these laws are intended to maintain public order or to repress crimes; others are designed to affect the conditions of persons and property, to settle the juridical relations which may arise from civil and commercial contracts; for example, to define and protect sales, donations, and exchanges. In order to ensure that these

two categories of laws shall be respected, society appoints judges. It is a necessary element of any civilization that men should be entrusted with the duty of rendering justice upon other men. When a difference occurs between two citizens, can we leave it to them to settle it? If they were reduced to this extremity, we should have nothing but quarrels and fights upon every hand. In the general interest, therefore, the nation assumes this responsibility, not only in order to prosecute and condemn the guilty but to settle the disputes of those who cannot agree. Now, how does it go about the business of exercising this formidable power? That is what we shall look into. We will visit the court; we will listen to a hearing; we shall see the magistrates on their bench, the advocates pleading, and the social function accomplished by justice will, I hope, appear to us in all its majesty.

Public Education.

There is another great duty which is assumed by the Republic. It guarantees to every citizen the right of education. In order that this guarantee should not be illusory, it has opened free schools, and forces parents to allow their children to be taught. As far back as 1791 the Constituent Assembly had inserted in the

Constitution the double principle of public organization and gratuitous instruction. This desire of the incipient Revolution was accomplished in 1882. Boys and girls upon leaving school are certainly not learned, but they have attained to the most indispensable and elementary kinds of knowledge, and they are, above all, in a position to shape their own minds by reading.

The institution of national and compulsory education was not effected without keen opposition; it was, however, a necessity for a democracy like the French. Is it not allowable to demand a minimum of capacity from the citizens whose votes decide the destinies of the country? We must therefore examine how the State undertakes its duty as teacher, and what are the three degrees—primary, secondary, and superior—of public education.

Social Assistance and Assurance.

Pascal has said: "All men's bodies and all men's minds are not so valuable as the smallest impulse of charity; charity is of an infinitely loftier order." Pascal was right. But there is something higher even than individual charity, and that is social solidarity.

A democratic society ought so to govern itself

that its members, as far as is possible, make one another better and happier. They should mutually help and improve one another. We have just seen that the Republic contributes to intellectual and moral improvement by means of education. It also contributes to the development of well-being by social assistance and assurance. It does not leave the care of the sick and poor entirely to private beneficence. It requires the departments and communes to join the State in assisting the aged, the infirm, and the incurable. It makes foresight, like education, compulsory. It wishes the industrial or agricultural workers to impose certain sacrifices upon themselves in order to create pensions, and in order to reward them for the effort thus made it assists them in the formation of these pensions; it pays out money from the public funds in order to complete the savings of private persons.

Taxation.

In order to accomplish the complex mission which it has undertaken the State has need of resources. These are furnished by the members of the nation. They all contribute to the public expenses, and are therefore in France known as *contribuables*, while taxes are known as *contributions*.

National sovereignty would be nothing but an empty word were the Government, were any Government, able to impose pecuniary sacrifices upon the country by force. The country must accept them and decide their extent. The voting of budgetary receipts is one of the essential prerogatives of the nation, and it is by the vindication of this collective right that most modern peoples first began to attain self-consciousness. If, then, we employ the term imposition or impost, we must be careful to determine the exact meaning of the word. There is no power external to the nation which levies tribute upon it; it is the nation which imposes tribute upon itself of its own free will for the greater advantage of its members. It will be interesting to know what sort of contributions it requires, what is the mode of assessment, and what are the means of collection.

Individual Rights and Duties.

So much for material interests. Now to consider our moral interests. The national sovereignty, of which we have already considered various manifestations, is not unlimited; the individual has natural rights, which it cannot destroy without abuse. What would you say if

the Government tried to prevent you from thinking or speaking freely? Something within you would rebel; you would complain of oppression, and you would be right. These rights, which you require others to respect in you, and which, by a just return, you ought to respect in all your fellow-citizens, are those which are summed up in the Republican motto: Liberty, equality, fraternity. When we read these three words upon a public monument they seem to us to possess an eloquent simplicity. They will seem perhaps less simple, but more eloquent and more true, when we have grasped their social and political significance.

Military Duty and Patriotism.

The nation which guarantees to us, with so many other advantages, the free exercise of our personal rights has a sacred title to our gratitude and our devotion. But we shall deal later with the principal obligations which are imposed by patriotism, and in particular with military service.

THE COMMUNE

II

THE COMMUNE

THE ANCIENT COMMUNE

THE houses which make up the town or village that we know are not as a rule very ancient. The oldest were built perhaps a hundred and fifty or two hundred years ago. But by looking closely we shall find, among these comparatively new structures, traces of a more ancient past. The Gothic doorway of the church dates from the fourteenth century. When the railway was being built in the valley the digging revealed Roman pottery and Gaulish weapons. Your birthplace, wherever it may be, has been inhabited for a very long period. Before the houses we see now there were others, of a rougher construction, which replaced others which were still more primitive. The majority of French towns and villages thus date back to a very remote antiquity, and a great many still bear names that recall memories of our Gaulish or Ligurian ancestors.

The Ligurians occupied the territory of the France we know some seven hundred or eight hundred years before Christ. The Gauls or Kelts, who had until then dwelt upon the shores of the Baltic and the North Sea, began in turn, from the sixth century onwards, to settle down in the rich country which lies between the Rhine and the Pyrenees. They were not shepherds or nomads; they were husbandmen who loved the earth and preferred a fixed habitation. A few nobles erected houses at the edge of the forest or on the banks of the rivers from which, surrounded by armed servants, they directed agricultural exploitations. But the greater portion of the population, rather than settle in scattered homes and expose itself thereby to the attacks of man or beast, had at an early period felt the need of establishing centres of common habitation, and had with great intelligence selected the most favourable spots. Was there here or there a spring of fresh water? Did some great river offer, for the transport of merchandise, the aid of its navigable waters? Did some height lend itself to the erection of an impregnable fortress? Did some corner of the earth entice men by the mildness of its climate and the abundance of its harvests? Immediately this site was placed under the protection of a

familiar deity, the head of a family or a tribe would settle there with his kinsmen or fellow-tribesmen, and a village, hamlet, or town sprang up.

The dwellings were not particularly elegant. They were not even what we to-day should call very comfortable. They were modest boxes of dry stone, or merely crude circular huts of wood or hardened clay, with a roof of thatch pierced by a hole which allowed the smoke to escape. Around the strong places and entrenched encampments were heavy walls, built, without cement or mortar, of large piled-up stones.

All these human agglomerations constituted small societies, in which the sense of common life and the idea of mutual assistance would, by the mere force of things, be rapidly developed. There were local gods and tutelary genii, the worship of whom drew all the inhabitants together. It was necessary also to provide for collective expenditure, to maintain fortifications and temples, to build roads and bridges. Hence the necessity of conferring together and of discussing the projects which interested the village or town.

One of these urban or rural groupings did not, however, form a city. The Gaulish city (*cité*, from *civitas* = State) was a much larger district,

as large, indeed, as several of our modern departments. It was governed by magistrates. These magistrates were elected for a year—not by the people itself, but by a Senate exclusively recruited from the nobility.

The Romans.

When the Romans had conquered the Gauls they did not break down the political organizations which they had found established. They preserved the Gaulish cities or States, with their original names, their capitals, secondary towns, villages, and hamlets. But little by little they introduced into each of these States or cities their own municipal organizations, with magistrates who bore Roman names and whose functions were modelled upon the Roman type. Little by little, too, they gave the capital town—that which exerted a preponderant influence over the rest of the territory—certain important privileges. From the first centuries of the Christian era the Gallo-Roman city had *duumvirs*, who dispensed justice, supervised the finances, and watched over the public order; it also had priests, pontiffs, and augurs, who celebrated, with increasing detachment, the Imperial religion or the native cults; it had a municipal Senate, recruited, like the Roman Senate, from the aristocracy, and

called a *curia* or council of *decurions*. This city provided its own police; it had a garrison; it possessed and administered a treasury; it maintained the streets and highways, the public baths, the sacred altars, the places of public entertainment, and even appointed municipal schoolmasters and physicians.

But in the third and fourth centuries the activity of these political bodies relaxed, and the municipal system fell into decay. The central government of the Empire penetrated more and more completely into the administration of the cities; it appointed controllers to supervise their internal affairs; these were first called "curators," and later "defenders," and they gradually absorbed more and more authority. At the same time, the recruiting of the decurions became every day more difficult. The progress of Christianity alienated the nobles from functions which remained closely bound up with pagan practices. These functions were, moreover, purely honorific, and as it was usual for the decurions to offer those under their administration entertainment in the shape of feasts and holidays, the expenses of which were defrayed from their own purses, the places of the elective magistrates, as may readily be understood, were less and less sought after. The Empire then

took drastic measures; it made the decurionate obligatory and hereditary, it took rigorous measures against bankrupt curias, and thus completed the suppression of the municipal system.

The Frankish Monarchy.

At the moment when the Franks invaded Roman Gaul, the autonomy of the city was no more than a memory. Clovis and his Merovingian successors did not, however, judge it useful to invent a new method of governing the various regions of the country. They preserved the existing institutions, as the Romans had done before them. The cities no longer appointed their heads; they were ruled by delegates of the central authority, who in some districts were already known as Counts, which is, companions of the Prince. The Frankish monarchy retained this denomination and this method of local government. The Count resided in the chief town, and had authority over the whole territory of the city or State; he was invested by royal diploma; originally he was appointed not for life, but for a term of no great length.

These Counts often abused their power to commit excesses and ruin the populations. That one who has perhaps left the most execrable

memory received his title from King Caribert. He was called Leudaste. He began life at the kneading-trough; he was originally a slave in the King's bakery. The wife of Caribert had distinguished him by setting him free and appointing him chief of her stables. The King, desiring to add to these favours, had then confided to him the County of Tours. In this government Leudaste indulged himself to his heart's content; he pillaged the churches, despoiled the inhabitants, and scandalized everybody by his crimes and debaucheries. All went well until he thought fit to enter into conflict with the celebrated Bishop Gregory of Tours. Then King Chilperic and Queen Fredegonde gladly surrendered him to the vengeance of the people. He was arrested, bound to a pillar, and killed by flogging with bars of iron.

Under Charlemagne and the Carolingians the *county* remained the administrative unit. We seldom meet with scoundrels of the stamp of Leudaste. But such abuses did continue that the Prince was forced to recommend the Counts never to hang men without a trial, never to sell their favour for presents, and to render justice fasting. To recall the Counts to their duties Charlemagne instructed special delegates to make regular circuits, to ensure that no one laid hand upon the

royal domains, and "to cause justice to be administered in the churches, to widows and orphans, and to all the people."

The Feudal System.

But now, in the increasing anarchy of the ninth and tenth centuries, the seigneurs despoiled the King of almost all his prerogatives. The State became incapable of fulfilling its essential office: it no longer maintained order; it no longer protected the lives and property of the citizens. The humble sought the aid of the great; they chose a protector, sometimes a royal official, like the Count, sometimes a noble and wealthy landowner. They swore an oath of fidelity toward him, and declared themselves his vassals. The King, who for some time already had found it advantageous to grant land to his Counts, rather than to pay them a salary, gradually came to regard them as his own vassals; he conferred upon them certain charges and benefices for life, and recognized their right in turn to have others in their vassalage. Soon the process went farther. The territorial duties and benefices became hereditary and constituted what were known as fiefs. The Counts wrested a portion of his power from the King, and in the general disorder the vassals of the Counts in turn usurped rights which

belonged to the central power, such as those of levying taxes, rendering justice, coining money, and maintaining troops; the Counties were dismembered and parcelled out; the *seigneuries* multiplied and were split up. What became of local life in the midst of all this?

Local existence, uneasy, terrified, took refuge at the foot of the seigneurial castle. The land was covered with strongholds and fortified manors, which in early days were very solidly built of timber, and which were surrounded by moats or fosses full of water and were entered by means of drawbridges. There, in case of alarm, the whole neighbouring population took refuge under the protection of the castellan.

Among the peasantry some men were free, but the majority were serfs. As a rule the serfs could move from place to place only by permission of the seigneur. They had not the right to bear witness against a freeman. The seigneur, as master, could sell them and their children. In an act of partition between two seigneurs, dated June 6, 1087, we read: "We have proceeded to the sharing of the children, male and female, belonging to several parents. Was excepted one quite young girl-child who is still in her cradle. If she lives she will be our common property until the conclusion of an

agreement which will attribute her to the one seigneury or the other."

The "free" peasants themselves had only a shadow of liberty. They were obliged to pay a multitude of dues in money or in kind, were subjected to the most laborious *corvées* and exposed to the most atrocious exactions.

The inhabitants of the towns had more independence. The merchants and industrial workers formed associations among themselves: confraternities or guilds, which obtained certain immunities from the seigneurs, lay or ecclesiastic. The notables, the *bons-hommes* or *prudhommes*, were sometimes authorized to a certain small extent to concern themselves with local affairs. But the towns did not administer themselves; each town was the property of one or several seigneurs. The *bourgeois* were even sold at times, or inherited along with houses and lands.

Communes and Parishes.

Little by little a certain degree of harmony was evolved in the feudal disorder. Large fiefs were formed. The King himself came to his own again; he set to work to reconstruct his kingdom and reconquer it from his vassals. At the same time, during the period of the Crusades,

a widespread movement of popular emancipation took place in the country-side, and more especially in the towns.

Many peasant serfs obtained their freedom. Many free peasants bought advantages or exemptions from their seigneurs, which were ratified by solemn charter. Moreover, assemblies of parishioners gathered about their church, which presently possessed in common rights of usage and pasturage, and which in some cases even undertook to apportion the Imperial taxes throughout the village.

In the towns the movement was bolder and the resurrection more complete. The burghers acted in co-operation and planned to free themselves from the mortmain of feudal tyranny. From the end of the eleventh century onwards, from north to south, from the land of *oc* to the land of *oïl*,[1] there was a general effervescence and upheaval. Sometimes the seigneurs, by calculation or from fear, conceded to the towns liberties which were confirmed by charters—veritable treaties of peace; sometimes the

[1] In the Middle Ages the territorial languages of France were more than dialects: they were written languages. In the Northern French of Court circles the word for "yes" was *oïl:* in the Provençal tongue it was *oc;* hence *langue d'oïl* and *langue d'oc*, the latter term surviving as an alternative name for part of Provence.—TRANS.

oppressed burghers or *bourgeois* only obtained satisfaction at the cost of rebellion.

Almost everywhere the clergy, a privileged order, showed themselves hostile to the municipal liberties. "Commune, a new name, a detestable name!" indignantly cried the Benedictine Abbé of Nogent (Guibert, who relates his life at the opening of the twelfth century). As for the Capetian monarchy, you may suppose that it would have taken good care not to encourage communal aspirations in its own domain: at home it was extremely wary of novelties; but in the hope of enfeebling its vassals it cunningly favoured the claims of the *bourgeois* against those vassals, claimed the right of confirming the charters of liberties, and thus came forward as the great protector of the good towns of France.

In Flanders the work of emancipation proceeded swiftly, and, as a rule, peacefully. Saint-Omer and Lille obtained their communal rights without striking a blow. But in many towns liberty was won only at the cost of blood. At Puy, Aurillac, Nîmes, Marseilles, Toulouse, and Valence civil war broke out. At Laon there was a terrible riot. The *bourgeoisie* of the town had bought, for hard cash, the right to associate themselves as a commune, and the King,

Louis VI, had sanctioned this privilege. Bishop Gaudin, displeased thereby, bought of the King the right to cancel his signature. The exasperated population rose in rebellion, invaded the episcopal palace, and killed Gaudin without more ado. For four years at Amiens there was fighting in the streets; the castellan took refuge in the great tower of Castillon, and the armed townspeople proceeded to besiege him. The eleventh and twelfth centuries were full of such tragedies.

The measure of liberty given to or won by the towns was as variable as the means of liberation employed. Here serfdom was abolished simply, and the charter confined itself to regulating the taxes or to prohibiting arbitrary imprisonment. There a kind of personality was recognized in the town, which could thenceforth acquire real estate and enjoy the revenues. Elsewhere the town became a true lordship: it had a seal; it had a coat of arms; it exercised the right of justice, levied taxes, and commanded a military force; it even had power to make laws; and when the bell of the great belfry called the burghers together the population that assembled was in reality that of a small free State.

In these privileged towns the municipal

magistrates were restored. They were sometimes called sheriffs, sometimes peers, sometimes jurors. They had at their head a mayor = major or maior.

The municipal magistrates were elective; but they were not elected by the entire population. The right of suffrage belonged, as a rule, only to the trade guilds and the notable burghers.

In Provence and Languedoc the majority of the communal governments were administered with complete independence by consuls or "capitols," who were sometimes elected by universal suffrage, but who generally constituted a small local aristocracy.

The End of the Communal Liberties.

But these first popular conquests had no morrow. In the middle of the fourteenth century, when France and England began that ruinous and interminable war which was to be known as the Hundred Years' War, we find that seventy "good towns" still sent their deputies to the States General, convoked to vote the subsidies which the King required, and the provost of the merchants of Paris, the famous Etienne Marcel, was in constant communication with the communes of Flanders. At the same time the peasants in the country, or, as they were called,

the villeins or *Jacques*,[1] rebelled against the nobles, abandoning themselves to acts of violence which provoked terrible reprisals. But as soon as royalty began its great work of national unification the agents of the King penetrated everywhere and little by little destroyed the communal powers.

The towns themselves often contributed to their own downfall by their intestine dissensions or their financial imprudence. Local troubles and budgetary embarrassments furnished the King with the occasion to intervene. He restored order or paid debts. But he then said to the communes: "Since my protection has been necessary, submit to my authority."

Let us recognize that the King was right when he judged certain urban prerogatives to be incompatible with national unity. It was very natural that he should not leave the right to make war and administer justice in the hands of the towns, and that he could not suffer the existence of a host of little States within the State.

We must understand that the King did not indefinitely abandon to the towns even the right of taxing the inhabitants as they chose. The State also had need of resources, and the assets of

[1] The peasant was contemptuously referred to as Jacques Bonhomme, hence *Jacquerie*, the peasants' war.—TRANS.

the towns were also the assets of the State. It was therefore necessary to reconcile the interest of the public treasury with that of the municipal budgets. But here the King went a little too far in his reprisals. He left the towns only the right of administering common or patrimonial property and of collecting, under the control of the central authority, the local taxes which were known as octroi money or *grant* money. Why this word "octroi"? Because the King wished plainly to emphasize the favour which he *granted* the communes in abandoning this source of revenue to them. When in France you arrive in a town and an official asks you, "Have you anything to declare?" he doubtless is not aware that the service which he represents borrows its name from the old royal ordinances.

The monarchy, however, did not stop there. For centuries it pursued its great plan of centralization and deprived the communes of almost all their liberties. Under Henry IV and Louis XIII there were hardly any traces left of their former independence.

From 1692 onwards Louis XIV in his turn issued a whole series of edicts and ordinances depriving the ancient electors of the communes of the right of choosing their own mayors; he created the offices—that is, hereditary public

appointments—of sheriffs, jurats, capitols, and perpetual mayors. The pretext alleged was that the interest of the towns demanded such a step, as they were said to be agitated and disturbed by elections. But in actual truth these offices were created that they might be sold and the royal treasury filled.

In 1764 the elections of the town councils were temporarily re-established; but the mayors were still appointed by the King. Five years later the elective town councils were replaced by permanent officials in all the towns which did not consent to redeem themselves or had not the means to do so.

The villages, more modest and less clamorous than the towns, had preserved, under the supervision of the ecclesiastical authorities, their parish assemblies. These assemblies had at first the humblest of functions. They appointed the members of the parochial body-politic and the sacristan. Later they dealt with the upkeep of the church and the cemetery. Finally, as each parish had to feed its poor, they used to deliberate on matters of poor relief. But they had no real power, and their resolutions were voted under the permanent control of the clergy.

Such was the administrative life in the various

parts of France at the end of the eighteenth century. You will agree that it was not in a flourishing condition. I shall explain in the next chapter what it became under the Revolution and what it is to-day.

MODERN TIMES

THE REVOLUTION.

WE shall remember that on the eve of the Revolution the liberties of local communities were expiring. As early as the 14th of December, 1789, the Constituent Assembly endeavoured to revive them. The commune, in the eyes of the Assembly, was the corner-stone of the national edifice whose reconstruction was then commencing; it was the administrative unit most in conformity with the nature of things. The Assembly therefore decreed that there should thenceforth be in France 44,000 communes.

The figure was rather high for a country which then contained only some twenty-five million inhabitants. A juridical existence was given to small agglomerations which had not all the means of existence. To-day the number of French communes is only 36,225. It is not, however, absolutely fixed. It happens that a commune whose population has increased divides into two,

or, that two communes whose population has diminished are united.

You know that the National Assembly, on the evening of the 4th August, abolished all privileges. It desired the laws to be identical for all Frenchmen. It could not therefore subject the 44,000 communes which it had created to different regulations. Formerly there had been, so to speak, an order of precedence among the various localities. The "good town" came before the town, the town before the borough (*bourg*) or market-town, and the market-town before the village. The Constituent Assembly proclaimed the equality of the communes and subjected them to an identical system. They all had a municipal body and a mayor, elected by the populace and endowed with very wide powers.

In its desire to restore vanished liberties, the Constituent Assembly even went so far as to confide to local assemblies certain functions of which, it seems to us, the State should not have been deprived. The result was abuses which compromised the public security, which the Convention hastened to suppress; but the new system which was devised to suppress them did not last. For several years the fate of the communes was obscure and uncertain.

The Consulate and the Empire.

You may imagine that the Consulate, animated by the genius of Bonaparte, was not inclined to tolerate anarchy. But under the pretext of repressing the excesses of local authorities he inflicted on all the communes the most humiliating tutelage. We shall doubtless have other occasions of speaking of the great consular law of 1800, generally known by its date upon the Revolutionary Calendar: the law of the 28th Pluviôse of the year VIII. This law it was that reorganized the whole French administration in a spirit of discipline and order whose importance we must not ignore. But in so far as it determined the communal organization, the law of the year VIII may be summed up in two words: it recognized the existence of the communes and it deprived them of all liberty.

In each commune there was thenceforth a municipal council, a mayor, and one or more assistants. But neither mayors nor assistants nor municipal councillors were elected by the persons interested. They were appointed by the First Consul or his delegates: that is, by the prefects.

The first Empire did not stop here. It was not enough that liberty no longer existed: equality

even was once more suppressed. There were, as formerly, "good towns"; and a decree of 1808 granted the title of baron to the mayors of thirty-seven communes.

Towards Liberty.

The Restoration did not wish to re-awaken the local life of France. The slumber of the communes assured the authorities of tranquillity. But after the Revolution of July 1830, Louis-Philippe solemnly promised, in the Constitutional Charter, a reform of municipal institutions based upon an elective system. Laws passed in 1831 and 1837, by ratifying this promise, realized the beginning of emancipation. The appointment of municipal councillors was restored to the electors; but note that these electors were not, as to-day, all the citizens who were of age; they were only those taxpayers who paid a determined tax or *cens*. The mayors and assistants were still appointed by the King, as were the prefects.

The Republic of 1848 completed this work of progress by establishing universal suffrage, and granting the right of electing their mayors to communes of less than six thousand inhabitants.

The Second Empire gave the signal for another set-back. It restored to the Govern-

ment the appointment of all mayors: it claimed the right to select them outside the municipal councils, and decided that these councils might on occasion be dissolved and replaced by administrative commissions.

It was difficult for a government under a system of universal suffrage to maintain the communes for any length of time in such close subjection. The Empire itself, shortly before its end, returned to more liberal measures, and with timid embarrassment ceded a few fresh privileges to the municipalities.

But it was the Third Republic which first really had confidence in the communes of France and established a lasting equilibrium between the prerogatives of the State and the liberties of the local powers. Understand that I do not pretend that the relations of the State and the communes are to-day settled in a definite and unchangeable fashion. There is never anything perfect or irrevocable about legislation. Perhaps there are functions which the State has retained which it would do better to transfer to the communes. But on the whole you will see that the present municipal system leaves the people a great deal of freedom in the treatment of local affairs. Paris alone, being the seat of the Government, has always been subjected to a

special system, and is an exception to the ordinary rule.

It was a law of the 5th of April, 1884, that determined in the least details the functions of the rejuvenated and fortified municipal institutions.

The Municipal Council.

Come with me now to the common house, the *maison commune,* and tell me first if you know a more beautiful name than this! The common house! What ideas the familiar term awakens! There is, in the village, a house that belongs to no one in particular, that is open to the poor as to the rich, that is, so to speak, the domestic centre, the home, of the village itself. There, under the presidency of the mayor, the assembly of the elected representatives of the commune, the municipal council, meets and deliberates.

Let us enter. The sessions are public: we have the right, you and I, to be present, since the affairs debated are those of all the inhabitants. If we are in a commune of five hundred inhabitants, or even less, the council is composed of ten members; in the larger communes the number of councillors is larger.

All the councillors are present, I hope, unless they have a good excuse for absence. It would

be unpardonable to accept a mandate only to fulfil it indifferently. This mandate, it is true, is gratuitous; 'none the less, it entails a duty with which one must not trifle. When a man has the honour to be chosen by his fellow-citizens as their representative he has no right to betray, through egoism or negligence, the confidence which has been placed in him.

The Elections.

How was this council elected that is now deliberating before us? Every Frenchman aged one-and twenty years, in enjoyment of his civil and political rights, after residing for at least six months in the commune, has the right to assist in appointing it. It is enough for him to demand, before the appointed term, the inscription of his name on the electoral list, and on the day of the elections to deposit in an urn, at the *mairie*, a paper bearing as many names as there are councillors. All those who have the faculty of participating in the choice of the representatives of the commune are under a moral obligation to vote. Too many citizens take no interest in municipal affairs. Indifferent or contemptuous, they let the elections go by without troubling themselves. Those who abstain from voting not only disdain to act for the

welfare of their countrymen; they neglect at the same time their own interests.

The *scrutiny* takes place every four years on the first Sunday in May. The polling-station or voting bureau is in charge of the outgoing mayor or one of the councillors and four assessors, the two oldest and the two youngest of the electors present at the meeting. At least three members of the bureau must always be present to supervise the proceedings. At the close of the scrutiny the papers are taken from the urns and counted. Those candidates who have obtained one more than one-half of the votes recorded are immediately elected and proclaimed, provided the number of their votes amounts to one-quarter of the number of electors on the register. If there are not sufficient councillors elected to fill all the places, a new scrutiny takes place the following Sunday, and those who receive the most votes are appointed without the necessity of receiving half the votes.

The electors have a very great liberty in the choice of candidates. They cannot, however, vote for just anybody. Eligibility—that is, the legal possibility of being elected—is subject to several conditions. The functions of councillor demand experience and maturity of mind; the law therefore requires that the candidate

shall be at least twenty-five years of age. The functions of councillor require a genuine attachment to the commune; the law therefore requires that the candidate shall be an elector therein, or, if he is not an elector, at least that his name shall be upon the register of ratepayers. There are circumstances in which a citizen is incapable or unworthy of representing his compatriots; the law requires, therefore, that the candidate shall not have been deprived of his electoral rights by a sentence of the law, and that he shall not have been so disorderly in his own affairs as to have been subjected by law to the supervision of a judicial council. The mandatories of the people must be as independent as possible of the commune and the public administrations. The law decides, therefore, that indigent persons assisted by the municipal funds cannot be elected. It also excepts the salaried agents of the commune. By a more curious disposition, which reflects who knows what social prejudice, it also excludes domestic servants. It is better inspired when it forbids an official to employ his authority to influence the electors, and when it declares ineligible, in the district in which they exercise their functions, prefects, sub-prefects, magistrates, and others. It extends this ineligibility to teachers, because it is anxious to keep

them out of local quarrels. Formerly it included ministers of religion in this prohibition, but the separation of the Churches and the State has deprived the various cults of all public character, and the law provides that in certain cases they may be elected.

Besides the cases of ineligibility and incapacity, the Legislature has established a certain number of cases of incompatibility. In other words, it considers that certain persons, while being eligible, should upon being elected withdraw from the posts which they fill, and which are regarded as irreconcilable with the mandate of the municipal councillor. Thus, a prefect may be elected outside the district in which he exercises his functions, but if he wishes to remain a councillor he must resign his official post.

Other incompatibilities result from relationship or other alliances. In a commune of more than five hundred inhabitants parents and children, grandparents and grandchildren, brothers and brothers-in-law cannot simultaneously be members of the municipal council. It is not desirable that one single family should lay its hand upon the public affairs. If this protective measure has not been applied in the very small communes, it is because it would often be difficult, in a village, to find ten councillors who

are not related or allied within the prohibited degrees.

Powers of Councils.

The municipal councils meet in ordinary session four times a year: in February, May, August, and November; the prefect and the mayor may also the one prescribe and the other convoke extraordinary meetings. The mayor or the assistant presides at meetings. Resolutions are passed by an absolute majority of the voters; they are summed up in a *procès-verbal*, or minute-paper, which is signed by the members present and copied into a special register. We may if we please consult this register. We may even copy the deliberations, the communal budget, the municipal decrees. It contains no secrets from the inhabitants, and we have the right to know how the affairs of the commune are being dealt with.

Formerly the municipal councils were little more than "consultative" assemblies; they expressed wishes rather than arrived at decisions. The prefect, representing the Government, was always able to oppose the execution of their resolutions. To-day, on the contrary, the principle obtains that their resolutions are of executive force by themselves. They cannot

be annulled unless they have been passed in violation of the law.

But there are exceptions. It must be admitted that these are rather numerous, and that the progress of civic education would to-day permit of their reduction. These exceptions are of three categories: certain municipal proceedings are subjected to the approval of the prefect; others, of greater importance, to the approval of the Government; others, more important still, to the approbation of the Chambers.

Independently of the resolutions which it may vote, the municipal council is required by law to give intelligence of certain matters, such as the creation of organized charities and the accounts of hospitals and asylums. It has the right to express its desires in respect of matters of local interest. Finally, although in principle it is invested only with an administrative authority, and although politics does not enter into its legal domain, it is the council that appoints the communal delegates instructed to take part in the election of Senators.

Mayors and Assistants.

Under the Second Empire and the terms of a decree of 1852 the mayors used to wear a handsome costume: blue coat, silver embroidery, an

olive branch on the collar, a white waistcoat, a hat with black plumes, and a sword with mother-of-pearl hilt. To-day they are content upon solemn occasions to bind themselves with the tricoloured scarf, which is the emblem of their authority.

They and their assistants are chosen by secret scrutiny by the municipal councils and selected from among the councillors. Their part is two-fold. They are, in respect of the people, the representatives of their communes; in respect of their communes they are the representatives of the Government.

In the first quality the mayor executes and causes to be executed the resolutions of the municipal council; he appoints those in the employment of the commune; he signs, in the name of the commune, all deeds, treaties, or agreements which are properly authorized; and he represents the commune in the courts if it has the misfortune to be tried.

He is also entrusted with those measures indispensable to the maintenance of order, public hygiene, and the protection of rural property. All these measures enter into the department of what is known as the municipal and rural police. To ensure their observation the mayor issues by-laws. Whosoever in-

fringes one of these by-laws commits a misdemeanour, and is punishable by a fine determined by law. Thus, the mayor may prescribe the watering of the roads, the removal of mud, snow, filth, and the sweeping of the pavements; in this way he can forbid the straying of dogs, the shaking of rugs out of the window, the excessive speed of automobile carriages, and what not. In a word, he watches over the life, health, tranquillity, and even the slumber of those in his administration. If a fire breaks out, or if in a rainy season the commune is threatened with floods, he may demand the co-operation of the public; he may order the inhabitants to lend assistance, and demand, if the event necessitates, that they shall place at his disposal horses, vehicles, and implements adapted to the work of salvage. At such a moment he personifies the commune; he is, in some sort, the incarnation of the idea of solidarity; he speaks in the name of the public interest. Individual interests must be silent, efface themselves, and obey.

In his quality of agent of the central power, the mayor publishes and executes the laws. He is also officer of the judicial police and officer of the civil State. But you must not allow these two expressions to evoke the picture of a military officer of any kind; he is concerned only with

public offices and social functions. As officer of the judicial police, the mayor is the auxiliary of the procurator or prosecutor-general of the Republic; he seconds this magistrate in the search for criminals. In cases of *flagrante delicto* he can summon the gendarmes, forest guards, rural guards, or the troops themselves, and none of these have the right to refuse his request. As officer of the civil State, the mayor celebrates marriages; he draws up and signs, before legal witnesses, the deeds relating to the contract, and those referring to births and deaths; in a word, the documents which determine the juridical position in society of the persons concerned. Before the Revolution the registers of the civil State, the institution of which dates back only to Francis I, were kept by Catholic priests; they were accessible neither to Protestants nor to Jews. They were secularized by the Constituent Assembly and confided to the municipal authority.

The Communal Budget.

Each commune, subject to the approval of the prefect, votes its own budget, upon which it inscribes its expenditure and revenue. Its expenses are of two kinds. Some are declared compulsory by law; others are optional. Among

the former are not merely the necessary expenses of the communal services, such as the upkeep of the *mairie* or municipal building, the payment of the municipal staff, the maintenance of the cemetery, and other charges of the same kind. Certain other expenses required by more general interests are also compulsory, and if the municipal council neglects or refuses to vote them they may be entered upon the communal budget by the superior administration. The State, for example, regards it as the duty of the communes to contribute to the expenses of public education, poor relief, and communications.

To meet these obligations and to respond to all other collective necessities, the commune has at its disposal the revenues of the properties of which it is owner. It may also, on condition of complying with the law, impose rates and contract loans. We shall return to this subject when we have learned a little more concerning the public finances.

THE DEPARTMENT

III

THE DEPARTMENT

HISTORICAL.

THE history of the departments does not by a long way go back so far as that of the communes. We have seen that the commune was born spontaneously of the necessity of things, the force of events; we have watched it constitute itself, enlarge itself, and demand its liberties or franchises. We have seen it alternately supported, curbed, and stifled by royalty; we have seen it re-animated by the Revolution, put in leading-strings by the Consulate and the Empire, a little enfranchised by the monarchy of July, and finally emancipated by the Republic. The department, on the contrary, is not the work of the local populations. We must not suppose that the inhabitants of a number of communes united of their own accord, in order to form an administrative district of a hundred, two hundred, five hundred towns and villages. It was the National

Assembly which, in 1789, decreed the division of France into a certain number of departments, and in so doing established a complete innovation.

Formerly France was composed of provinces, many of which were much larger than our present departments. These provinces were very ancient and had formerly enjoyed a great measure of independence. They had even begun, under the feudal system, by being true States, which had their armies, their laws, their diplomatic relations; and their seigneurs were often hostile to the King of France. Only very gradually did the regional spirit, while remaining very much alive, become reconciled with the idea of French unity. As the authority of the King was increased he made away with the feudal States and replaced them by provincial governments. At the head of the provinces he placed functionaries of various sorts—bailiffs, seneschals, military governors. He often had great trouble to deprive them of the prerogatives which they had usurped, and to repress the abuses which they committed. In the seventeenth century they were replaced by agents bearing a new title—the intendants, who in their turn very shortly became formidable personages with whom the King himself had to reckon.

Their powers, everywhere considerable, differed accordingly as they were exercised in the provinces known as *pays d'Etats* or in those known as *pays d'élection*.

The *pays d'Etat* were those in which the provincial Estates met from time to time—that is, assemblies comprising representatives of the three orders—nobility, clergy, and the Third Estate—and which retained, at all events in appearance, the right to vote and distribute the taxes demanded by the King.

The *pays d'élection* bore a name which might lead you to suppose that they also had elected representatives. Nothing of the kind. They were provinces in which the administration of the finances was confided to superior officials known as generals of the finances. These functionaries chose or "elected" sub-delegates, whose duty it was to distribute the incidence of taxation in their "generality."

Two reforming Ministers, Turgot and Necker, endeavoured successively, under Louis XVI, to reorganize and unify the provincial administration. They failed. After them a new scheme, elaborated by Calonne, ended, after many vicissitudes, in the constitution of regional assemblies, which were for the most part appointed by the King.

It was thus that matters stood on the eve of the Revolution. The provinces kept to their territorial limitations and their names; and, in spite of all efforts at unification on the part of royalty, they continued to be ruled by different customs.

THE REVOLUTION.

In 1789 the Constituent Assembly proclaimed that all authority emanated essentially from the nation, that there was in France no authority superior to the law, that the King reigned only by law, and that the law must be the same for all Frenchmen.

The Assembly suddenly conceived that the persistence of the old provinces, with their variety of local customs, might be an obstacle to its great plan of national reconstitution.

"It appeared to fear," said the *Moniteur* of the time, "that perverse and ambitious men might profit by the general effervescence and the momentary disorganization of all authority to effect the dismemberment and dissolution of the monarchy."

The Constituent Assembly therefore considered that it was performing a patriotic action in subordinating the various portions of the State "to the great national whole."

The ancient provinces, moreover, were too unequal in extent and in population to form portions of a country destined henceforth to receive a uniform administration.

Mirabeau would have liked to see a hundred and twenty departments created, but without too greatly clashing with local habits and prejudices. "I demand," he said, "that the departments shall be made up only of citizens of the same province, who already know one another, who are allied by a thousand ties. The same language, the same customs, should continue their work of mutual attachment."

The original idea of the committee which had projected the reform was very different. "To create the Constitution," said Thouret, who was the proposer of the law, and was afterwards President of the Assembly, "is to regenerate the State. We must not bring a pusillanimous spirit of routine to so great an undertaking." He proposed to divide France geometrically into eighty departments, each of 324 square leagues; but after Mirabeau's speech Thouret somewhat modified this conception. "The new division," he explained, "may be effected almost everywhere while observing local requirements and, above all, while respecting the boundaries of the provinces. . . . If any one has supposed that

this division would be executed by means of perfect geometrical squares, which would make the surface of the kingdom into a chessboard, he should have reflected that the mountains, rivers, and towns already existing would not, as a matter of fact, permit of drawing perfectly straight lines from the east to the west of France or from the north to the south."

Finally an intermediate system was adopted. It did not, to use Thouret's words, turn France into a chessboard, but rather, as you will see by the map, into a sort of jig-saw puzzle.

In all, eighty-three departments were created, all divided into at least three districts, and at most nine, each district being itself divided into cantons. This important and difficult operation, which must, one would have thought, have been the work of several years, was completed, thanks to the zealous collaboration of the provincial deputies, in less than three months.

The National Assembly went still further, and in order to "smite the feudal tree even to its roots" it erased the very names of the provinces. It sought the names of the new departments in the seas which washed them, the rivers which drained them, or the mountains which traversed them.

The Department

The Consulate and the Empire.

The Constituent Assembly believed it could confide all the departmental powers to elective authorities: a council of thirty-six members, a directory of eight members, and a procurator-general-syndic. It was not long before this decentralization was found to be excessive, and in order the more surely to oppose to coalized Europe an indivisible nation, the Revolutionary Government appointed in each department a commissary of its own selection. But the directories were still entrusted with a great deal of business which ought to have been referred to the central authority, from which resulted several years of veritable anarchy. Longing for order, France acclaimed the Consulate, and the law of the 28th Pluviôse of the year VIII, of which we have already spoken in respect of the communes, re-established, with disastrous exaggeration, the centralization of power. At the head of each department it placed a prefect appointed by the First Consul and instructed to represent the general local interests. This prefect was a national figure in the midst of local life. He was the organ and the emanation of the Government. But the law of the year VIII did not stop there. It deprived the departments

of all elective representation. It pretended, it is true, to create a general council. But the members of this council were appointed by the First Consul from the list of notables.

To increase the prestige of the prefects, the Consulate gave them a semi-military, semi-civil uniform: blue coat, waistcoat, white breeches or pantaloons, the collar, pockets, and reverses of the coat embroidered in silver, a red scarf with silver fringes, and a three-cornered hat embroidered in silver, and a sword. These high officials held in their hands the entire departmental administration: conscription, taxation, agriculture, commerce, public works, education, and charity. "Your attributions" (says a circular expounding the law of Pluviôse) "embrace everything relating to the public wealth, the national prosperity, and the peace of those under your administration." The latter had no right to express their desires.

The prefects, with their apparent omnipotence, were only the docile agents of the First Consul and afterwards of the Emperor. As for the councils general, they were selected by the Government from among the landowners most faithful to its policy, and had no independence.

TOWARDS LIBERTY.

This condition of things was unchanged under the Restoration, and in 1822 we find an ex-prefect of the Consulate and the Empire, an ex-director-general of the police of Louis XVIII, a future peer of France, Beugnot, writing: "The members of the councils general are nothing more than Government employés, appointed and dismissed by the Government. The only difference is that they have the advantage over the others of working for nothing."

Not until 1830 and the Revolution of July did liberty gain a foothold. The councils general were thenceforward appointed not by the Government, but by the electors of the departments. Unfortunately these electors were as yet only those who paid a determined amount in taxes; that is, the most wealthy.

The monarchy of July accomplished another reform. It recognized the civil personality of the departments; in other words, the right of owning property like a private person.

The advent of universal suffrage, after the Revolution of 1848, naturally procured for the councils general a return of vitality. They were thenceforth really representative of the people,

But their actual functions were still extremely limited.

After the war the National Assembly realized the necessity of reviving the centres of local activity by means of a bolder decentralization, and promulgated the law of the 10th August, 1871, which is still the basis of the departmental administration.

The Prefect.

Let us visit the capital or chief town of the department. We shall see a large building before which the tricolour flag is flying, and which bears in large letters the word "Prefecture." This building belongs neither to an individual, nor to the State, nor to the city: it is departmental property. Within are the private apartments of the prefect, furnished by the department, the various offices or bureaux of the prefecture, and the hall of the council general.

Although the prefect has lost much of his former power, he still enjoys a great deal of authority. In the first place he represents the Government; and in this quality he causes the orders received from Paris to be executed throughout the department. He has also, by delegation, powers of individual decision. It is he who, at the suggestion of the chiefs of the

administration, appoints a host of petty employés: rural factors, communal forest guards, inspectors and menders of highways, etc. It is he again who appoints the teaching staff of the primary public schools, and this is to be regretted, for the prefect is by habit, if not by legal intention, an official who busies himself considerably with politics, and it is to be deplored that any one should suspect political motives as entering into the selection of schoolmasters. As agent of the Government the prefect has the right to annul the orders issued by the mayors or the illegal resolutions of the municipal councils; he is responsible for public order, and is free to requisition the troops in order to disperse rioters or to repulse bodies of malefactors.

The prefect is also the official representative of the department, and it is his function to execute the intentions of the council general.

To ensure the execution of such matters as enter into his competence, the prefect issues orders or by-laws, and these by-laws are of course obligatory in the department, as those of the mayor in the commune. But it goes without saying that he can do nothing to break the law. The principles proclaimed in 1789 are still extant in modern society: the law is above everything and every one in France; above the prefect,

the Minister, the President of the Republic. If then it happens that a by-law or an order is illegal, or infringes the rights of the individual, the person injured is not defenceless. He may choose between three methods of defence: the appeal gracious, to the prefect, now better-informed; the appeal hierarchical, to the proper Minister; and the appeal contentious, to the administrative courts. A democracy cannot give the individual too many means of protecting himself against the abuse of power.

The prefect is surrounded by a small army of assistants: a secretary-general, appointed by the Government, and directors of divisions, directors of bureaux, and other employés; these he may appoint himself, but he must observe certain rules fixed by a general statute. He has also beside him a consultative committee, composed of three councillors of the prefecture, who are appointed by decree. The advice, sometimes optional and sometimes otherwise, which this committee offers the prefect, is really an idle formality: the chief function of these councillors is of a different nature. They form the first degree of the administrative jurisdiction; and in this quality they pronounce upon such law-suits as the law brings to their cognizance; for example, they judge such disputes as arise

between individuals and the administration in respect of public works or direct taxation. The decisions rendered by this administrative tribunal can be revoked only by a higher tribunal—namely, the Council of State.

The Council General.

While the prefect at the head of the department represents the authority of the Government, the people have elected representatives to meet him: these are the councillors of the council general. Each canton of the department elects a councillor by universal suffrage. The number of councillors varies therefore from department to department, according to the number of cantons. The conditions of eligibility and the cases of incompatibility are similar to those which condition the municipal elections. To be elected as a general councillor of a department it is not enough to be a French citizen; it is not enough even to be born in that department; the candidate must be domiciled in the department, or inscribed upon the roll of those who pay direct taxes: that is, he must have actual interests in the department; moreover, he must be at least twenty-five years old and must hold no appointment of the kind enumerated by the legislature. If a prefect, a secretary-general,

or a councillor of the prefecture could be elected in the department in which he served, you may readily imagine that it would be easy for him to abuse his influence in order to gain the confidence of the electors.

The councillors general are elected for six years. Their mandate is gratuitous; the legislature considers that election does them honour rather than that it imposes a burden upon them. This mandate touches general politics only at one single point: the councillors general, by law, form part of those delegates who appoint the Senators. All their other duties concern the administration of the departments only.

We have seen the municipal council at work; let us now consider the council general. It assembles twice a year in ordinary session, on the second Monday after Easter, and on a date which may be freely chosen between the 15th of August and the 1st of October. The sessions are public; the prefecture is open to all, as is the *mairie*. The president is a councillor chosen by his colleagues, for the assembly has now the right, which it had not under the Empire, to compose its staff as it wishes, and even to make its own rules of procedure. The prefect sits next to the president; he forms one of the council, assists in their deliberations, and he may speak, but he must not vote.

One after another the councillors submit reports to the assembly. What a number and what a variety of questions! A bridge is to be built on a departmental highway; a concession is required for a railway of local importance; a main highway requires to be classified as such; a court of law or a prison is in need of repairs; an idiot asylum needs a bathing-hall; agricultural societies require bounties; there are friendly societies to be controlled, receipts to be collected, credit accounts to be opened, taxes to be settled. Report follows report with bewildering rapidity. As a rule the reporter limits himself to proposing the conclusion of affairs submitted to the council by the bureaux of the prefecture. "No opposition? . . . Adopted!" says the president, and they proceed to the following report. From time to time the assembly grows warm in respect of some question of fishery, hunting, or netting birds; from time to time also it is aroused by some political question. Then the prefect remarks that the law of 1871 authorizes the council to vote only upon questions that have no political character.

If the council is Governmental in spirit, it avoids the question, and the prefect contentedly telegraphs his victory to the Ministry. But if the council is of the contrary colour it will vote

upon the question in spite of the prefect, who, however, does not seem any the worse therefor.

We must admit that it would be desirable to see the departmental assemblies, composed as a rule of intelligent and industrious members, make a less passive use of their prerogatives. Their sessions, it is true, are short and infrequent. The law itself enacts that the council general shall as an ordinary thing exercise only an intermittent and ineffectual control; and it has sought to correct this defect by instituting a "departmental commission" which is elected by the council, and which meets once a month to deal with current affairs. But no matter; if you have attentively followed the proceedings of the council you will doubtless receive the impression that there are unemployed forces here, and that the citizens ought to strive to make the departmental organism more active and energetic.

The Arrondissement.

The department is divided into arrondissements. These are the ancient districts. Each arrondissement is like a department in miniature; it has a sub-prefect, appointed by the Government, and an elective council, which comprises one member for each canton, and which has the most modest duties imaginable. But the arron-

dissement has not, like the department, a civil personality; it has no budget of its own; it is only an administrative district which has scarcely any reason for existence. We shall consider it again when we come to examine the legislative elections. It would seem as though, even before the day of automobiles and aeroplanes, the railways must have diminished distances sufficiently to make it useless to leave the departments cut up into four or five fragments. Many intelligent minds are even inclined to think that the divisions fixed by the Constituent Assembly are to-day too small to offer a suitable field for provincial activity, and that it would be better to group several departments together, in order to lighten and simplify the administrative services, which have retained their useless and costly complexity since the days of diligences and post-chaises. Plans of reform are always being put forward, but come to nothing. The difficulties to be overcome are numerous and serious; there are habits, interests, even susceptibilities to be considered. To effect the necessary reorganization we should need a great movement of public opinion, like that which encouraged and supported the legislation of 1789.

THE STATE

IV

THE STATE

IN ANCIENT TIMES

AMONG the peoples of antiquity, and notably among the Greeks and Romans, each family practised the worship of its ancestors and honoured the domestic deities. Families, by grouping themselves together, had formed tribes, which also had their common gods, and the tribes, by confederating, formed cities (in the ancient sense), that is to say, associations which were at once political and religious. The collective body which these associations constituted was the State. The State was closely bound up with the religion of the city. It was, as a great master of history—Fustel de Coulanges—has said, an almost superhuman power to which the minds and bodies of the citizens were equally subjected and enslaved. The State was free to deprive individuals of their wealth. If it had need of money it bade the owners of olive-trees give it

their oil and wealthy women to contribute their jewels. It allowed neither belief nor education to remain free. It even regulated the smallest details of private life. In Sparta the law told women how they must dress their hair; in Athens it forbade them to take more than three dresses when travelling; in Rome it forbade them to drink wine. Men were hardly more independent. In Rhodes they might not shave their beards; in Sparta they were forced to cut off their moustaches.

The Romans, in conquering the world, from the Atlantic Ocean to the Euphrates, greatly extended and modified the original conception of the State. The State was no longer the city; it was the whole Empire. Gaul, turned Roman, found itself included in this vast community.

Even under the Emperors the two ancient words *res publica* were retained; they meant the "body politic"; we have preserved them in the one word "republic." This beautiful Latin expression signifies that the State is the inheritance of all.

This inheritance, however, was not administered by all. Theoretically, the people were the sovereign, but they delegated their sovereignty to the Emperor. The Imperial authority was

sacred. The orders of the prince were celestial orders. He alone had the right to make peace or war; he dispensed justice in person and through his officials; he levied taxes as he pleased; he promulgated edicts and decrees which had the force of laws; his power extended even to religious matters; he was, in a word, the personification of the State."

The Frankish Monarchy and the Feudal System.

The Franks invaded Gaul. With them came Clovis and the Merovingians. The State, which was formerly represented by the Emperor, was now incarnate in the King. The King was in his turn the master of justice and the law. He transmitted his wishes to the people by means of a whole army of officials, who were known as dukes, counts, vicars, centeniers. There was no national or provincial assembly to limit his authority. Royalty was hereditary; it passed, like an estate, from father to son; it was shared between brothers.

But these kings, who regarded royalty as a patrimony and not as a function, compromised their public authority by their ambition, their avarice, and often by their crimes.

The State collected taxes in order to meet the

common expenditure. The towns, the churches, the monasteries, and the courtiers demanded exemption, and by granting such immunities the kings themselves despoiled the State of its financial resources.

The State had judicial power, but the use which the Merovingian kings made of that power was violent and arbitrary. The bishops and abbés and great landowners demanded the privilege of being judged by the State no longer; and the King, willingly or otherwise, accorded this new privilege not only to these individuals, but to the lands which they possessed and the inhabitants who dwelt on these lands.

In this way there was gradually formed about the King an aristocracy—that is, a body of notables, the great ones of the kingdom, the richest and most highly placed in dignities and functions, and this aristocracy became more and more powerful in the face of enfeebled royalty. Landed property thereupon assumed a great importance in the relations of men. The great landowner did not exploit his land himself; but instead of farmers he depended on what were known as beneficiaries—that is to say, he conceded his land, on a revocable title, to men who cultivated it, and who owed him not only rent and services but obedience and fidelity. The

feudal system had its origin in these concessions.

Those were hard and troublous times; the poor could not buy land; the small landowners could not keep theirs; the water ran more and more swiftly to the river; the great estates increased and developed from generation to generation. In the general disorder, what were the weak and lowly to do? There was no longer a State to protect them; they sought support in the powerful; they recommended their little parcels of land and their humble persons to those who were stronger than they; and the result of this "recommendation" was that their fields and their liberty fell into the hands of their protectors.

Around each great landowner was a group of the "faithful" and of vassals who knew no master but their own feudal chief, and knew nothing of obedience to kings.

The civil wars of the seventh century completed the subdivision of the State. Within the limits of modern France there were two or three hundred little independent States, governed by bishops or abbés, dukes or counts.

One of the richest and most powerful of these seigneurs was the chief of the King's officials, who was known as the Mayor of the Palace (remember that mayor or *maior* meant the

greatest). The mayoralty of the palace passed one day to a powerful family, that of Pepin, and the King was totally eclipsed. Pepin d'Héristal commanded armies, appointed dukes and counts, and distributed lands. He and his successors united under their authority an immense number of feudatories. The Merovingians were no more than sham monarchs. Pepin the Short, with the consent of the notables, relegated the last representative of a degenerate race to a convent, caused himself to be crowned at Soissons, and anointed by the Archbishop St. Boniface, and then by the Pope himself. He thus placed the State under the protection and, to a certain extent, under the domination of the Church.

Pepin and his heirs, the Carolingians, depended not only upon religion to restore the royal authority and reconstitute the dismembered State; they supported themselves also by the feudal system. Charlemagne was a political chieftain omnipotent from the Pyrenees to the Elbe, who exerted both a civil and a military authority and directed great centralized administrations; he was at the same time a leader of the Church; he was regarded as a sacred personality, as a prince accepted by God; finally, he was a feudal chieftain, and had under his patronage, his suzerainty, both vassals and

"faithful." By means of this triple force he improved the State, fortified it, unified it, and when he assumed the title of Emperor he was really the effective depositary of the ancient Imperial authority.

But after him, under Louis the Good, this temporary reconstitution of the State crumbled away, and the great nobles resumed their independence; the "faithful" deserted the State to return to chieftains who were nearer to hand; the central authority was shattered and dispersed.

At the end of the ninth century there were already, in the kingdom of France, twenty-nine small States or great fiefs, consisting of provinces or fragments of provinces, which were governed by dukes, counts, marquesses, and viscounts. At the end of the tenth century there were fifty-five such fiefs. Men lost sight of the ancient idea of the city, the fatherland, the State; they had no other horizon than that of the territorial domain on which vassals, colonists, and serfs were grouped about the seigneur.

It was the proprietor of this domain who exercised all the rights of public sovereignty, the right of peace and war, the rights of justice, of police, and of taxation. These rights were in a certain sense incorporated in the soil, and were transmitted with the soil to the heirs of the lord

proprietor. The functions confided by the King to his feudatories became themselves hereditary, so that the kingdom was full of a multitude of petty despots, who accounted to no one for their actions, and who oppressed the populations with impunity. This condition of chaos lasted until the fall of the Carolingians.

The Old Style.

But on May 21, 987, King Louis V. died childless. The notables of Frankish Gaul assembled at Senlis, and unanimously agreed to offer the throne to the most powerful among them, Hugues Capet, who was Duke of France and Count of Paris. Then, under the Capetian dynasty, began a struggle between the King and the feudal system which lasted for centuries; a struggle conducted on the side of the monarchy with obstinacy and admirable method, and which eventually resulted in the triumph of the King's authority.

At the advent of the Capets the personal domain of the King of France was extremely modest; it consisted of little more than the Ile-de-France and a portion of the Orléanais—that is, about the area of the departments of Seine, Seine-et-Oise, Seine-et-Marne, Oise, and Loiret. Even in this little State there was a host of

petty seigneurs, lay and ecclesiastic, who were almost sovereigns in their own lands. The King began by re-establishing his power in his own domain; then he sought to extend his boundaries by war, treaty, and marriage. It was a work of patience and perseverance. At the death of Louis XI, in 1483, the feudal system was beaten.

During the sixteenth century France completed the recovery of her unity, the monarchy of its strength, and the State of its sovereignty. In letters patent dated 1528, Francis I stated that he held in his hands the majority of the ancient duchies and counties. Henry IV continued the lengthy and difficult enterprise, and, under Louis XIII, Richelieu assured its final success. The State thenceforth was confounded with the absolute monarchy. If it is not proved that Louis XIV ever pronounced the famous saying attributed to him, "*L'Etat c'est moi*," it is certainly the case that if he had said as much he would have spoken nothing but the truth. "The entire State," writes Bossuet, "resides in the person of the prince. In him is the power and in him is the will of the whole people."

The Monarchical State.

To reach this point the King had to remove from the greater and lesser feudality the attri-

butes which the latter had wrested from the State. Aided by a long and skilful line of lawyers, who placed at his service, in order to facilitate this resumption, all the subtleties of Roman and feudal law, the King wrought in such wise as one by one to ruin all those powers that limited or neutralized his own. He could not altogether annihilate them. At the end of the *ancien régime* many nobles still retained the right of justice and of taxation upon their own lands. But royalty none the less had insensibly re-established the State in its most imperious form.

In this conception of the State three fundamental ideas survived: the Roman idea of sovereignty personified in the prince; the feudal idea, which royalty had turned to its own profit, and which made the king the universal suzerain, the real proprietor of the goods of all his subjects, these latter having only the enjoyment, or, as was said, the useful domain of their lands; and lastly, and especially, the Christian idea, according to which the king was the representative of God on earth. Under the *ancien régime* power did not reside in the people; the people was not the sovereign to govern as it listed; power came from God and God had delegated it to kings.

Listen to the adventure that befell an advocate of the Parliament of Paris in the sixteenth century. He had committed the imprudence of saying, in pleading, that the people of France had given power to their kings; and in support of his thesis he put forward a Latin text. "Then," writes a contemporary, "messieurs the gentlemen of the King of France rose and demanded in full audience that these words should be erased from the plea of the advocate, retorting that never had the kings of France taken their power from the people; upon which the Court forbade the advocate to employ such words or statements, and the advocate from remorse never pleaded cause again."

An edict of December, 1770, sums up this theory of divine right: "We hold our crown from God alone. The right to make laws, by which our subjects must be conducted and governed, belongs to us alone, independently and unshared."

The kings, holding their sceptre from God alone, were responsible for their actions only before God. The State, therefore, in their hands, became a formidable power, the principal object of which was apparently a constant increase. "The spirit of the monarchy," writes Montesquieu, "is one of war and aggrandizement."

The interests of the State, or, as one says, reasons of State, were therefore the sole law, before which all must bow.

So long as it developed and was powerful this monarchical State considered that its duty was accomplished. It barely considered the question of developing men's minds or of alleviating poverty. Usually it left such cares as these to the Church and to private persons.

For the rest, it had, in its might, but little respect for the rights of individuals. If a "subject," whether noble or yeoman, defied the State, there was no need to set justice in motion to arrest and imprison him. A royal order was sufficient, contained in a sealed letter, a *lettre de cachet,* and there is our gentleman in the Bastille. On the eve of the Revolution the Marquis de Mirabeau, the father of the illustrious orator, was still able to write: "Justice, police, finances, commerce, employments, artillery, market-towns, hamlets, lands, and people all belong to the King."

But you must not suppose that the kings, while thus concentrating all the prerogatives of the State in their own hands, were still, as under the old Frankish monarchy, able to dispose as they pleased of the royal domain. No. The idea of the permanent interest of France had already

penetrated and illumined the idea of the State. The royal domain was proclaimed inalienable, with all its rights, privileges, and "allegiances." The King, at his anointing, took the oath not to alienate this domain, and his solemn engagement is continually reproduced in the ordinances.

One characteristic expression appeared in the common law. The royal domain was called the domain of the crown. The crown thus became a sort of undying person, which remained unmoved above the heads of mortal beings, and thus stood for France.

THE REVOLUTION

But a symbol is a fiction, and France is a reality. The national consciousness began to awake in the course of the eighteenth century. The philosophers demonstrated that the people was the source of all legitimate authority. In a famous book, in which truth and paradox are mingled, Rousseau explained that the State is the entire body politic—that is, not the prince only but the whole mass of citizens. Trained in the school of these new ideas, the Constituent Assembly proclaimed, in 1789, in the Declaration of Rights, that "the principle of all sovereignty resides essentially in the nation; no body nor individual can exercise authority

which does not emanate expressly from the nation."

Thenceforth the State was nothing more than the nation itself regarded as a political association; a profound transformation, whence all the rules of modern law derive. The State is no longer the King; it is no longer a symbolic France; it is a real living France, with its millions of inhabitants, its collective fortune, and its personality of the past, present, and future.

The Modern State.

Let us now try to realize what the State is to-day. You live, perhaps, in Paris; you have a friend who lives in Lille; another lives in Brest, another in Marseilles. In all these cities the same laws control the actions of Frenchmen; the same taxes are levied, and the amount so collected is placed to the account of the national collectivity; in all the administration is organized in the same manner, justice is administered by similar tribunals, a single gendarmerie keeps order in all, and the same army watches over the safety of the country. What does this mean, if not that the State has an authority which it exercises within a determined boundary? The idea of this territory is indeed inseparable from that of the State. There can be no State without

a country, large or small, over which it can extend its sovereignty. It renders various services to the inhabitants, and in turn it imposes certain obligations upon them.

On the territory which the State commands it may, like private individuals, like the commune and the department, own property in the shape of land, buildings, etc. It is the State, indeed, that watches over the goods of the nation. These goods constitute what is called in administrative law the domain. They fall into two distinct classes: the public domain and the private domain of the State.

Here is a river, a navigable river, the Rhône, the Seine, the Meuse. To whom do you suppose these watercourses belong? To the riverine populations? But by what right could they pretend to extend their property over these great fluvial arteries which the labour of men has not created and which may be necessary to the community? The navigable watercourses belong to the State—that is, to the nation as a whole.

But here is a canal. It was dug by human labour, but it was the State that constructed it in the public interest. It also belongs to the State. It is the same with harbours, roadsteads, national highways, and the great railroads. All these possessions and others analogous to them

are not subject to the laws that condition private property; the State does not own them in order to derive any particular advantage from them; it owns them with an intention of general utility. These things intended for collective employment compose the first part of the domain of the State: the public domain. The State has to preserve them and maintain them, but may not sell them nor give them nor encumber them in any way. Private individuals, on the other hand, cannot acquire them by prescription—that is, in continued possession. The owner of a house situated beside a national highway may occupy a strip of the roadway for as long as thirty years, but the State will always have the right to take back what he has usurped from the national inheritance.

The private domain of the State consists, on the other hand, of goods which are of the nature of ordinary property; for example, a building employed for administrative purposes, a ministry, a palace like the Elysée, the Hôtel des Invalides, or the Louvre, or a barracks; or, again, those vast forests which are scattered all over France and which yield an important revenue.

Permanence of the State.

The State being merely the juridical symbol of the nation, naturally endures as long as the

nation. It survives revolutions and changes of constitution; these do not extinguish the State. The State endures amid things that pass away. France has known kings, directors, consuls, emperors, and presidents of the Republic. In all these metamorphoses she has remained France, and the life of the State has been neither suspended nor impaired.

Whatever governments may arise, the State preserves a continuous existence in respect of foreign Powers. The international treaties concluded in the past by the kings of France were respected by the Republic as though the latter had signed them. Only yesterday, in Portugal, the first word of the young republican Government was that it regarded as inviolable the diplomatic conventions included in the heritage of fallen royalty.

This permanence of the State is seen not only in foreign relations. It is manifested also in its internal laws. Provided these laws were the work of a power constitutionally authorized to enact them, they survive the government which promulgated them. To-day, in France, under the Republic, we have codes which date from the Consulate and the First Empire, and we even apply laws which date back to the *ancien régime*.

It is the same with the pecuniary obligations which the State contracted in the past. The Republic continues punctually to pay the interest on loans which were contracted by previous governments; it pays the pensions granted by ancient laws; it pays annuities to surviving employés who were on the civil list or paid from the private domain of Louis-Philippe. In short, the State behaves like an honest man who does not, in maturity, repudiate the debts of his youth.

We shall see in our next chapter what are the rights and functions of this perpetual State.

IN MODERN SOCIETY

The Forms of the State.

Before we pass in review the principal attributes of the French State, I must explain that we must not regard all the States in the world in the same manner. The French State, at the centre of France, is a unique Power. There are elsewhere federative States, that is, States formed of an association of little States. This, with numerous variations, is the case with Switzerland, Germany, Brazil, the United States of North America, the Australian Commonwealth, etc. In the federative States there is a common or federal

State superimposed, in a sense, upon the small individual States. The essential attributes of sovereignty, notably diplomatic representation abroad and the right of declaring war, are generally reserved by the superior State; but each of the component States has a government of its own, and under certain restrictions exercises the right of legislation within its own territory. In France there is nothing of this. Whether you are at Toulouse or Nancy, if you follow a national highway it will always be a road belonging to the same State; if you consult the law, it will everywhere be identical.

This centralization of the State was in the first place, as we have seen, the patient work of the ancient monarchy. But modern France has appropriated it, and it was impossible that it should be otherwise. By proclaiming that sovereignty is one and indivisible and that it proceeds from the nation, the Revolution indeed gave France a keener sense of her own unity.

The Functions of the State.

This State, which represents the nation: what part does it play in respect of the individuals who compose it? You will remember that in antiquity it was all-powerful as regards the individual. The citizen had not even the choice of

his beliefs; he had to adopt the religion of the State.

Very different was the conception of the State held in 1789 by the representatives of the French people constituted as a National Assembly. They believed and proclaimed in a solemn declaration that man has natural rights, sacred and inalienable.

But if you have rights your neighbour has rights: exactly the same as yours. Each of these rights, therefore, has created a duty for you. You must respect the rights of others as you desire them to respect yours. The ideas of right and duty are therefore correlative and inseparable, and the Assembly of 1789, in drawing up that admirable Declaration of the Rights of Man, which has so justly been called written justice, at the same time and as a consequence established a declaration of duties.

This is clearly implied in Article I: "Men are born and remain free and equal as to rights."

Individual Rights.

But what are these natural and imprescriptible rights which the National Assembly placed out of reach of the State, and which, it proclaimed, every political association was essentially bound to safeguard?

In the first place, liberty, or freedom to do whatever does not injure others. But who is to determine what will injure others? If your neighbour himself looks to the matter, he may perhaps be capable of restraining your right and enlarging his own. The State, then, must intervene, to assure the various members of society of their respective enjoyment of liberty. It will set certain limits. It will say: "If you pass this limit you will encroach on the liberty of others; you will cause annoyance to another member of society, or you will injure society itself." A delicate mission, but necessary. The State fixes the point of equilibrium and reconciles and harmonizes contradictory pretensions.

The Liberty of the Person.

The first of all liberties is the liberty of the person. Every man should be free to remain in France or leave it, to travel or remain in a city, without being either arrested or detained, unless according to legal forms and for a crime or offence proved by law. Under the *ancien régime* arbitrary arrests and detentions were very common. The King signed blank *lettres de cachet* and the Ministers handed them to subordinates, and they then became the subject of a shameful traffic. One Minister of Louis XV's,

Saint-Florentin, sold more than fifty thousand of these royal orders. The English, on the other hand, long before the French Revolution had laws protecting the security of the individual. These laws relate to what is known as *habeas corpus*. In other words, the law wishes that "thou shalt have thy body," that the State has no right to take it without imperious social necessity and without the regular application of the laws.

"It is on the benevolence of the criminal laws," said Montesquieu, "that the liberty of the citizen chiefly depends." And he continues his remarks in this cheerful form: "In a State which had the best laws possible on this point a man upon his trial and who was to be hanged the following day would be freer than a pasha is in Turkey." Montesquieu, who had not foreseen the Young Turkish revolution, meant that where the State does not permit a man to be hanged unless he has previously been sentenced liberty is better safeguarded than in a country where the subjects are at the mercy of an arbitrary prince.

Liberty of Work.

Another liberty, equally inherent in the human individual, is the right to labour. It was not

included in 1789 in the Declaration of Rights, but it was established by law in 1791 by the National Assembly.

Under the *ancien régime* industry and commerce were exercised by closed corporations, by guilds and companies, whose statutes prohibited any encroachment upon the work reserved by neighbouring corporations. The cobblers repaired shoes, but only the shoemakers might make them. This meddlesome organization of labour was protected by the State; Turgot wished to break it down, but it was too strong for him. The Revolution came into conflict with it, regarded it as a noxious hindrance to human activity, and destroyed it.

Liberty of work, however, is no more unlimited than any other liberty. The State may in the general interest subject labour to a certain number of legitimate restrictions.

Here, for example, are professions which demand certain guarantees of competence, and which ignorant persons could not exercise without injury to society: the professions of pharmacist, physician, and advocate. The State intervenes and only admits the right to plead, to attend the sick, or to sell medicines, if justified by certain particular studies.

Here are other restrictions. There are in-

dustries which may be dangerous, unhealthy, or inconvenient to a whole town or district. They exhale noxious odours, or discharge refuse into rivers, or make an unendurable uproar. The State does not leave them absolutely free; they are severely regulated, and in some cases prohibited near centres of population.

The State also forbids private persons to undertake certain industrial enterprises, reserving the monopoly thereof to itself, or conceding a licence for a determined payment to registered companies.

Sometimes monopolies of this kind are based upon the interest of national security. Thus in France the State makes its own gunpowder.

Sometimes the State seeks simply to procure budgetary resources. Thus it makes and sells tobacco, matches, and playing-cards, and forbids any one to do likewise.

Sometimes the monopoly is created so that a great public service may be established, such as the railway service, posts and telegraphs, and telephones. If all the inhabitants of a town were to club together in order to instal telephone lines without applying to the State, the State would immediately accuse them of usurping its prerogatives and would undo all they had done. "What!" you might say; "I cannot

plant tobacco in my own garden! I cannot sell little squares of cardboard with clubs or hearts printed on them! I cannot communicate with my countrymen by any method that suits me! And you call this freedom of work?"

Well, I explained that this liberty was by no means absolute. You are quite right in considering that the State ought not to restrain you frivolously. In the management of industrial affairs it is often clumsy and idle and dilatory. Its functionaries are not stimulated by competition and private interest, and are therefore lacking in initiative and sometimes in activity. These are serious objections to State enterprises. But the very Governments which most jealously encourage individual efforts cannot always entirely avoid the multiplication of collective services. Many of these services are indispensable to the progress of civilization.

Yet more restrictions. In the interest of the health of children the State forbids manufacturers to employ them in workshops before they have reached the age of thirteen, or twelve if they have obtained the primary school certificate and are furnished with a good medical report. Moreover, the State does not allow women and children of less than eighteen to work more than

ten hours a day. It also extends its protection to adults and males. In establishments where the engines or fires are running continuously, and in factories which occupy more than twenty workers together in one shop, a man cannot be kept at work longer than twelve hours. Moreover, where men are employed in the same factory as women and children the maximum is ten hours for all of them. Finally, the same employé or workman must not be employed for more than six days in the week in any commercial or industrial establishment.

The object of this complex legislation is to prevent employers from exhausting by excessive labour the strength of women and children and to provide the workers—even despite themselves if need be—with hours of leisure or repose, which they can devote to the duties and pleasures of domestic life. How far will such legislation go? How far ought the State to protect its citizens against themselves? This is one of the most delicate questions of politics and sociology.

Liberty of Conscience.

Article 10 of the Declaration of Rights of 1789 reads as follows: "No one shall be prosecuted on account of his opinions, even his religious opinions, provided their manifestation

does not disturb the public order by law established."

The modern State stops short upon the threshold of the private conscience. I am a freethinker, a Catholic, a Protestant, a Jew, a Mussulman, a Buddhist. Whatever I think, believe, or feel, does it concern the State? Let the State leave me the master of my own conceptions, instead of putting itself forward as the supreme arbiter of the truth.

It must not only respect my innermost thoughts; it must allow me to express them, at all events so long as that expression does not disturb the public peace, and if I am attached to a religion which has a particular form of worship, a clergy, and assemblies of the faithful, the State should allow me to practise it.

Under the *ancien régime* the State and the Catholic Church, while subject to frequent conflicts, had largely interpenetrated one another, and made no attempt to separate their powers. To-day, on the other hand, the State is secular and thought is free.

The Revolution separated the Catholic Church and the State. The Consulate reunited them, in 1801, by a Concordat which lasted for a century, by the terms of which the State, without having the power to meddle in religious matters, had

the right to appoint bishops, controlled the choice of senior curés, supervised the exercise of worship, and paid the ecclesiastical staff. A law of December 4, 1905, followed by several others, broke these ancient bonds. To-day all the Churches are separated from the State, Catholic, Protestant, and Jewish alike. The Republic does not pay salaries or grants to any sect. It does not recognize any sect as a State religion. But it guarantees the free and public exercise of all, within certain restrictions demanded by the order of society.

Liberty of Speech and Press.

"The free communication of thoughts and opinions is one of the most precious of man's rights. Every citizen therefore may speak, write, and print freely, subject to answering for the abuse of this liberty in the cases prescribed by the law." It is the Declaration of Rights once more that contains this proud claim to liberty. Formerly no book or journal could appear without the authorization or, as was said, the privilege of the King. The liberty of the Press was unknown. The Revolution destroyed these restrictions, but, for want of suitable legislation, allowed liberty to degenerate into licence. The Empire subjected books and journals to a

preliminary examination by the public authorities. The Restoration oscillated between opposite systems. The monarchy of July proclaimed the final suppression of the censorship, but continued to subject journals to considerable guarantees. The Second Empire re-established the necessity of preliminary examination, and allowed the administration to suspend or even suppress a journal after warning it. Only since July 29, 1881, has the State left all citizens free to say, write, and print what they please. But here, as always, the right of each citizen is limited by the right of the rest. Say or write what you please, but insult no one, defame no one; if you do, the insulted person has the right to prosecute you and obtain your condemnation.

Liberty of Assembly and Association.

Does the State authorize citizens to assemble for purposes of deliberation on literary, scientific, political, or social questions? Here, again, the old doctrine has changed. The State began by enforcing restraints. Before the Revolution only local holidays could be celebrated without the royal authorization. The Constitution of 1791 recognized the right of Frenchmen "to assemble together peacefully and without arms upon satisfying the regulations of the police." The

Empire, the Restoration, and the monarchy of July allowed none but private meetings. The Revolution of 1848, after it had re-established the right of public assembly, suspended it again. The Second Empire began with increased severity, but in 1868 it saw fit to restore the liberty of assembly to the electoral assemblies. Finally, the Third Republic, in a law dated June 30, 1881, ratified the recognition of individual rights by the State. Public assemblies are now free. They may be held after a simple declaration in a closed hall or in the open air, provided they do not encroach on the public highway. The authorities have no right to dissolve them unless collisions or blows result.

The State, then, leaves us free to assemble. But does it allow us to form permanent associations? This is a liberty of which it has until lately been extremely sparing. It seemed to look with suspicion upon any society which sought to establish itself outside the State. At the dawn of the Revolution the Constituent Assembly had suppressed all trade organizations as contrary to liberty and equality, nor had it thought fit to permit political associations. The Constitution of the year III showed certain traces of liberalism in respect of these latter. But the Empire inserted in the penal code a prohibition against the

formation, without the authorization of the Government, of associations of more than twenty members. Not until the law of 1884 was passed might artisans, agricultural labourers, and other workers form professional syndicates or trades unions. Not until the law of 1901 was enacted did all citizens enjoy the right of founding associations with no other restrictions than the necessity of respecting the law and the rules of good behaviour. To-day even Government officials may form associations, and they have not been slow to do so. However, it would be intolerable if they could turn their associations against the State, whose representatives or delegates they are.

The Rights of Property.

Let us once again refer to the Declaration of Rights, and examine Article 17: "Property being a right inviolable and sacred, no one may be deprived thereof, except when the public necessity, legally constituted, plainly demands it, and on condition of a just and preliminary indemnity."

The right to property is the logical ratification of human liberty. I am free, I labour, I gain money, I save it, and I have become a proprietor. My property is merely the material form of my liberty and my industry.

The Revolution, by proclaiming property a sacred and inviolable right, protected it from the State. Under the *ancien régime* the State, represented by the King, did not fear to appropriate, in the public interest, the houses or lands of private persons, and very rarely indemnified those whom it despoiled.

To-day, if the State is building a road, a canal, or a railway, and if this work of public utility cannot be accomplished unless you surrender a portion of your land, the law permits the State to expropriate you—that is, to force you to sell the property which it requires. But a special jury will settle the indemnity which must first be paid to you. You will no longer have your field, but you will have its pecuniary equivalent. The State will thus have reconciled, as far as possible, your private right and the public interest.

The Various Functions of the State.

First and last, the State plays innumerable parts. Before all else it is a soldier. It provides for the defence of the home and colonial territories; and to this end it maintains, at the cost of the greatest sacrifices, armies and fleets, builds fortifications, barracks, warships, cannon, dirigible balloons, and aeroplanes. It is a

commissary of police. It maintains the internal security of the country, prevents disturbances, and arrests criminals. It is a judge. It judges the disputes which arise between individuals, and to that end has created law courts, appeal courts, and a court of cassation. It is an engineer. It constructs harbours, lighthouses, quays, bridges, embankments, highways, and canals. It is, as we have seen, a manufacturer. It exploits the posts, the telegraph and telephone services, and the railway systems, and over those which it does not own it reserves a right of concession, a right of control, and a right of purchase. It intervenes in the management of mines and forests; it protects inventions by the system of patents, and the interests of authors and artists by laws relating to literary and artistic copyright. It is a hygienist; it concerns itself with the public health; it endeavours to check epidemics.

It extends its empire over matters intellectual. It enables all the children of the nation to receive, gratuitously, instruction in the elements of knowledge; it even defends them from the negligence of parents, making primary instruction compulsory. It creates not only schools, but colleges and universities; it teaches Greek, Latin, French, and other living languages, the sciences, and all that is known to humanity.

Its empire extends over the moral order. It organizes the relief of poor and abandoned children, the aged, the infirm, and the incurable. It not only encourages thrift; it enforces it upon its citizens as a social duty.

In short, it endeavours by all means to work for the welfare of the community, and if it does not always succeed it is because many human affairs escape its influence; it is master neither of circumstances nor of nature.

What popular prejudices upon this point need to be dispelled! The French are almost invariably tempted to regard the State as a kind of Providence which ought to provide a remedy for every evil. A State which distributes relief, subventions, and awards; such is the ideal which haunts the minds of a multitude of Frenchmen. A regrettable disposition, which saps the character and enervates the will. Help yourselves first of all, and the State, although it is not Heaven, will help you if it can.

NATIONAL SOVEREIGNTY

V

NATIONAL SOVEREIGNTY

IN ANCIENT TIMES

WE have already seen that our ideas of public rights and of common law are dominated by the idea of national sovereignty. This latter idea took centuries to emerge from the clouds that obscured it.

In Roman Gaul the influential men of a province occasionally found a way of making their opinions heard; they would meet together to give advice and express their desires. The people even from time to time was convoked by the governors, but assembled only to receive orders.

At the period of the Germanic invasions the custom of these aristocratic or popular assemblies had fallen into disuse.

When the Frankish kings established themselves in Gaul, they came from a country in which the populace had the custom of holding true national assemblies and of discussing in common

the matters which interested them. Clovis and his successors did not, however, import these traditions of their race into France.

THE MEROVINGIANS.

Clovis used to assemble his soldiers in order to inspect them, and you may remember how, in front of his troops, he broke the head of a man whose arms, he complained, were not properly kept. At other times we find the King inviting his Frankish warriors to share the booty of war. He would harangue his army as the Roman generals used to do; but the Frankish people had no regular assemblies in which to debate matters of national interest. There were military reviews, but nothing more.

However, the dignitaries of the kingdom, those who were known as the optimates, had a custom, under the Merovingians, of assembling yearly about the King and of deliberating with him. Thus during the first half of the seventh century the bishops and chieftains of Neustria, Austrasia, and Burgundy used to assemble respectively at Clichy, Metz, Orléans, Troyes, and Autun. In time these assemblies became more and more numerous. To the optimates were gradually added royal functionaries of lesser degree—the dukes, the "faithful," the *leudes*,

and even the latter were often accompanied by their suite. Out of vanity or a care for their personal safety, they brought their counts and their counts brought their centeniers. Hence important assemblies, which in the second half of the seventh century came to be known as general assemblies of the people.

These assemblies were never held spontaneously. It was always the King who commanded the notables to come to him. He consulted them and collaborated with them in the administration of justice and the enactment of laws. But in spite of their name, these assemblies had nothing popular about them. The men who accompanied the count were under his orders; the count was under the orders of the duke. It was no assembly of equal citizens discussing together the affairs of the country. The retainers of the great nobles did not even enter the royal dwelling or the place of assembly; only their chieftains were admitted to confer with the King, and when discussion was exhausted the King, seated upon his throne, would show himself to the people, address them, and send them away.

The Carolingians.

This custom persisted under the Carolingian kings. From Pepin the Short to Charles the

Bald one hundred and twenty-five assemblies were mentioned in contemporary chronicles. As under the Merovingians, it was the King who addressed individual invitations to the great nobles; it was he who chose the place of assembly; it was always held in one of his palaces or villas. The people remained outside, camped upon the plain, and the King even relegated to their tents those chieftains with whom he was displeased. In the interior of the palace, so the old chroniclers relate, the assembly discussed all that concerned the welfare of the kingdom and the safety of the country. The notables were consulted by the King and gave him their advice, but they never deliberated apart from him, and it was he who was finally responsible for the decisions arrived at. The people did not complain at being excluded; they were accustomed to obedience, and had as yet no consciousness of their rights.

The Capets.

The first of the Capets also gathered about them, from time to time, the great chiefs of the secular and ecclesiastical feudalities. But the greater barons quickly escaped from the King's authority and abstained from his convocations, and the general assemblies almost completely ceased.

In the thirteenth century we once more find

certain assemblies which were formed by order of the King. As a result of the movement of emancipation on the part of the commons, new forces were at work in the kingdom. We find Louis IX (St. Louis) inviting the burghers or *bourgeois* of the "good towns" to come to him in order to clear up certain difficulties which obscured the question of currency. Important assemblies were held before the crusades to Egypt and Aragon. Whenever the King of France found himself confronted with serious difficulties he formed the habit of associating with the course of action which he adopted, if not the nation itself, at least notable personages who might pass as representing the nation in his eyes.

Philippe the Fair, perhaps, had a few less commendable councillors in his *entourage*. The publicists of the time reproach him with having been hard to his own folk and gentle to strangers, with having "set back" Frenchmen "who were born of their own mother." But he had at least the merit of addressing himself on several important occasions to representatives of the three orders which compose the nation: clergy, nobles, and the "common" folk.

At the end of the year 1301 Pope Boniface had forbidden the bishops of France to grant

the King the least subsidy without the authorization of the Holy See, and proclaimed that the papacy was constituted by God above kings and kingdoms. Moreover, he convoked the French bishops at Rome for the 1st of November, 1302.

Philippe at once summoned to Paris, for the month of April, the nobles, dukes, and *gens du commune*, or commons. A crowd of barons, prelates, abbots, and deputies from the "good towns" of France repaired to Paris, and there assembled on the 10th of April, 1302, in the vast church of Notre-Dame. The three orders, according to a tradition established by previous assemblies, had to deliberate separately. The King was present, but it was the jurist Pierre Flote who spoke in his name and expounded the grievances of the crown against the papacy. The spokesman of the nobles, Robert d'Artois, replied that they were ready to shed their blood for the King. The orator of the commons, Pierre Dubois, deputy of Coutances, made a similar declaration. A protest addressed to the Pope was drawn up and signed by the representatives of the two orders. The clergy themselves, in a separate message, implored the Pope to revoke his injunctions "to avoid scandal."

Philippe convoked similar assemblies in 1303 and 1308. In the latter year the question was

what measures ought to be taken against the famous military order of the Templars, which was founded after the first crusade and which offended the King by its pride and avidity. Before engaging in this formidable enterprise, the King wished to ask for counsel and succour from the bishops, barons, abbots, mayors, sheriffs, and consuls of the kingdom. The representatives of the towns came in great numbers; the villages even sent deputies, who in certain localities were elected by universal suffrage.

In 1314 there was a fresh consultation. The King meditated a war against the Flemings, and had need of subsidies. He summoned to the palace of the Cité, in Paris, the clergy, nobles, and *bourgeois* of the kingdom, and demanded their co-operation and assistance.

These assemblies had not as yet a very keen sentiment of the rights of the nation; they simply recorded the wishes of the King, but they gradually formed a habit of discussing questions of general interest. The country was unconsciously awaking to political life.

The States-General in the Fourteenth Century.

The Valois, having ascended the throne, continued to summon these assemblies, which, to-

wards the middle of the fourteenth century, began to be known as the States-General. Upon his accession in 1351 Jean II, the Good, demanded a consultation of the three orders. The defeat of Crecy and the loss of Calais had opened the gates of France to the English. The King was deserted by a great number of his barons. The treasury was empty. The State was reduced to living by expedients and to coining false money. The King, discouraged and powerless, resolved to call the nation to his aid. The assembly of 1351 was followed, at an interval of four years, by a second assembly, which suddenly assumed a great significance. It was held in Paris on the 2nd of December, 1355. All the Estates of the *langue d'oïl* were convoked—that is, all those of northern France. Southern France, or the country of *langue d'oc*, had a distinct assembly, which was convoked at Toulouse on the 26th of March, 1356.

In Paris the representatives of the three orders or Estates assembled in the great chamber of the Parliament; this was 120 feet long by 50 feet wide, and in the midst of it was the Table, of marble.

Pierre de la Forest, Archbishop of Rouen and Chancellor of France, addressed the assembly in the King's name and requested the States "to

take counsel together to give the King such aid as would suffice to cover the cost of the war." The three orders declared "that they were ready to live and to die with the King and to place their bodies and their goods at his service." They demanded permission to "speak together," instead of deliberating separately as usual. This permission was accorded. The president of the commons, the spokesman of the good towns of France, was Etienne Marcel, draper, provost of the merchants of Paris. After a week's session the States announced to the King "that they would give him succour of 30,000 armed men per annum," and to pay these troops they voted a tax which was to be levied "on all men, of whatever estate they be, men of the Church or nobles or others." They also voted a "*gabelle* upon salt," which all were to pay. This assembly of 1356 proclaimed, nearly five centuries before the Revolution, the right of the nation's representatives to vote taxes and the obligation on the part of all Frenchmen to pay equally.

The States went even farther. To ensure their control of the situation they decided, upon separating, to hold two further sessions: "one in the month of March (1356), to judge of the sufficiency of the tax; the other in the month of November following, to examine the state of the kingdom."

When they met again in March the three orders found that the *gabelle* had encountered a lively resistance in the country, and they replaced it by a tax on revenue, which was also to fall upon men of all conditions—nobles, Churchmen, and *bourgeois*, and which was to be collected by the deputies of the Estates themselves.

When the second session was held the King had lost the battle of Poitiers and the English had taken him prisoner with his youngest son, Prince Philippe. "At this news," says Froissart, "the kingdom of France was greatly troubled and corrupted, and there was good cause for this, for this was a very great desolation." The eldest son of Jean, the Dauphin Charles, assumed the title of Lieutenant to the King and convoked the States before the day fixed. The first session was held in the great chamber of the Parliament, in the presence of the Dauphin. "Never," said the report of the assembly, "had been seen an assembly so numerous nor one composed of wiser men." More than eight hundred persons were present. The Chancellor, Pierre de la Forest, began by relating the disaster of Poitiers and by demanding that the States should "make help" for the deliverance of the King and the continuation of the war. The Dauphin spoke

in his turn "very wisely and very graciously." The Archbishop of Reims, the Duc d'Orléans, and Etienne Marcel responded in the names of the three orders and asked that they should be given time to deliberate.

As soon as the deliberations commenced the deputies realized the inconvenience of such a numerous body, and appointed a commission of eighty members, instructed to examine the questions at issue. These members took a solemn oath to observe secrecy as to their deliberations. In the first place, the Dauphin had thought to appoint officers to follow the sessions of the commission. "They were given to understand that the deputies would never accomplish their task so long as the members of the King's Council were with them." The royal officers had to retire. At the end of October the commissaries made a report to each of the three orders, and the united States adopted the conclusions contained in these reports. The Dauphin was requested to repair to the Cordeliers, where the sessions were held, and when there he was asked, among other things, to relieve of their offices the councillors of the King who were named to him, to have them arrested, and to confiscate their goods. The Dauphin replied to these demands evasively, and a few days later left for Metz,

leaving Paris in a state of fermentation. When he returned he was again obliged to convoke the States. They met in the month of February, and in order to satisfy them the Dauphin was obliged to sign, in March, 1357, a great ordinance of administrative and financial reform, which was already touched by a kind of democratic spirit. Unfortunately dissensions between the Estates ensued; violent language was exchanged, and intrigues had crept into the assembly. As, on the other hand, they had to play a very ungrateful part in the eyes of the nation, having to levy heavy war taxes, and as in attacking abuses they were jeopardizing many interests, they quickly became unpopular in the provinces. The deputies of the "good towns," moreover, found the journey to Paris long and costly, so much so that at subsequent assemblies the members were far less numerous. The collaboration of the King and the nation had been regarded, in an hour of terrible crisis, as necessary to the public safety. The States were summoned to vote subsidies; they had made this vote subject to conditions which the King had momentarily accepted. But this did not amount to a definite constitution, assuring the representatives of France of definite prerogatives. Opinion was not ripe for so profound a reform of public customs.

The Fifteenth Century.

However, the habit was formed of resorting to the States when the King's treasury was empty. In 1392 Charles VI became insane. The States-General of the *langue d'oïl* assembled in January, 1413, drew up a fresh complaint against the royal officers, obtained their dismissal, and again demanded financial reforms. Under Charles VII, despite the insecurity of the roads "and the great suffering there was in the kingdom of France," the States assembled fifteen times, but they confined themselves to expressing their "grievances," and so little did they play the part of genuine representatives of the country that they did not contrive to preserve the principle which was admitted in 1355 and 1356 that the consent of the nation was necessary to taxation; they left it to the King to establish, without their co-operation, two kinds of permanent taxes, the *aides* and the *taille*. One of the essential attributes of sovereignty was slipping from the nation and passed to the King. By 1439 it was lost. The States-General of the *langue d'oïl* no longer had any permanent financial powers; for two centuries longer they vegetated and then expired. Charles VII had never regarded them with benevolence; he only "showed his face"

at the opening and closing sessions, and the moment the deputies sought to present requests he "hid himself in a little retreat."

At the death of Louis XI the two parties who were disputing the supreme influence—the Orléans party and the supporters of Beaujeu—agreed to convoke the States-General. The deputies met at Tours on the 5th of January, 1484. This time all the provinces were represented, those of the *langue d'oc* as well as those of the *langue d'oïl*. All France, henceforth centralized by the trials of the Hundred Years' War, and the long effort of monarchical politics, appeared there in its unity. The deputies of the three orders were almost everywhere chosen in common by the electors. It was at this date, 1484, that the term "Third Estate," which survived until the French Revolution, was first employed to denote the *bourgeois* or "commons."

The deputies, like their predecessors, demanded the reform of abuses and a juster distribution of the *taille*. They would not even consent to vote subsidies unless a fresh assembly was promised within two years, for, said they, "the said States will not have it that henceforth any sum of money shall be raised without calling them, and unless it be by their will and consent."

This condition was accepted by the Chancellor in the King's name, and the States were dismissed. The promises made to them were soon forgotten.

The Sixteenth Century.

In 1506 King Louis XII wished his daughter Claude, then seven years of age and betrothed to the Archduke of Austria, Charles V, to marry by preference François of Angoulême, so that the royal domains should not be dismembered. In so grave a juncture he thought it best to assemble archbishops and bishops, the princes of the blood, the seigneurs of less importance, and the deputies "of the greatest towns." The deputies implored the King, as was desired, to marry Claude to François, and the King was eager to welcome a request which he himself had desired. The assembly proclaimed Louis XII the father of his people and dissolved.

For more than half a century there was no further question of States-General. But during the most strenuous of the wars of religion, François II, before dying, invited the three orders to appoint representatives, who were to assemble at Meaux. On the 13th of December, 1560, under the regency of Catherine de Médicis, the session was declared open. The Chancellor,

Michel de l'Hôpital, pronounced a speech which was at once energetic and moderate, in which he counselled tranquillity and toleration. "Gentleness will profit," he said, "more than severity." The orders deliberated separately in three chambers. The Chancellor, forced to admit to a public debt of forty-three million francs, had to ask for subsidies. They were refused. The session was closed, after the orders had presented the Regent with a voluminous *cahier* of demands. On the 31st of January, 1561, at Orléans, an ordinance was promulgated which acceded to a certain number of these demands, and which seemed vaguely to admit the right of the States to vote upon taxation.

The States of 1593 were inspired with a very different spirit. They were convoked by the Duc de Mayenne, the head of the League, in order to checkmate Henry IV, and to oppose him by a Catholic king. Henry IV had protested against the holding of this assembly, and forbade all persons to attend it under penalty of being convicted of *lèse-majesté*. The King, having judged that Paris was well worth a Mass, became converted, and thereby deprived the States of any excuse for further hostility; they were accordingly prorogued.

End of the States-General.

On the day after the majority of Louis XIII, the 5th of October, 1614, the States-General assembled for the last time in Paris. They numbered 464 members, of whom 192 were of the Third Estate. Richelieu, then Bishop of Luçon, was one of the representatives of the clergy; Robert Miron, provost of the merchants of Paris, was elected President of the Third Estate. The three orders showed themselves profoundly divided. The nobles wished to abolish the hereditary nature of certain offices by which the *bourgeoisie* profited; the Third Estate wished to abolish the pensions by which the nobles profited. The *bourgeois* represented to the nobles that "the three orders were three brothers, children of a common mother, France." The nobles replied "that they would not have the children of cobblers and shoemakers call them brothers, and that there was as much difference between the two orders as between master and man." The Court skilfully exploited such quarrels in order to escape embarrassing injunctions. The Third Estate was reduced to drawing up separate *cahiers* of claims. The King received these *cahiers*, made the fairest promises, and dismissed the deputies. Thus impotently

terminated the last session of the States-General. Never again until the Revolution was the country permitted speech. The nation, like the State, was absorbed into the monarchy.

MODERN TIMES

The Principle of Sovereignty.

While the idea of national sovereignty was in eclipse in France during the seventeenth and eighteenth centuries, the ideals of political liberty were largely incorporated in English institutions, especially after the year 1688.

For the rest, both French and English philosophers were studying the rational principles of public authority, and were sapping the foundations of the absolute monarchy. "A people," wrote Rousseau, "is like a person: it belongs to itself. The sovereign is not the head of the people, but the people itself." This novel truth was, you will remember, proclaimed by the National Assembly in the Declaration of Rights of 1789. "The principle of all sovereignty resides essentially in the nation; no body nor individual can exercise authority except such as emanates directly from the people."

Henceforth, therefore, an official would no longer hold his authority from the King or the

head of the State, but from the nation itself; the nation is the sovereign; the nation will govern itself, or agree to be governed by its own delegates; and the nation will vote all taxes. This doctrine of the Constituent Assembly does not mean that the national sovereignty should be unlimited, nor that it can suppress the rights of man. When we were considering the State, on the contrary, we saw that the source of the rights of man is not in a collectivity, but in the individual, the thinking and responsible being. But it was precisely to guarantee these rights that the public authority was created; its object is to assure us all of their enjoyment and to balance them among us all. From the moment sovereignty is exercised for the profit of all it is natural and necessary that it should belong to all, and that among the members of one and the same nation there should be none excluded and none privileged.

Moreover, the most authoritative governments are forced to reckon with public opinion, which is the instinctive expression of national sovereignty; and it is, on the whole, better for the peace of society that the people, which is really the true sovereign, should at the same time be the legal sovereign. Otherwise it is tempted to usurp by violent means, by riots and revolu-

tions, the authority which it is refused and to which it has a right.

The General Will.

But how is this general sovereignty which resides in the nation to manifest itself? What precisely do we mean by the will of the nation?

In an absolute monarchy the King or Emperor himself makes the laws. This type of monarchy, which, to tell the truth, no longer exists in any European country, corresponded with a certain degree of civilization, and of old, under an exceptionally gifted head, it may sometimes have had its advantages in the shape of a greater rapidity of conception and a more sustained vigour in execution. On the other hand, to how many caprices and errors has it not exposed the people so governed! In any case, we shall not return to the past; the bygone centuries are dead, and we have to live in the present.

Now, a nation is a composite creation of hundreds, thousands, millions of persons, and each of these persons has a distinct will. How, then, are we to disengage the resultant force which represents the general will?

For instance, if unanimous consent were necessary to the exercise of national sovereignty, we should be certain that nothing would ever be

decided. Even in the smallest commune in France it would hardly be possible to deal with public affairs on that basis.

We can no longer make use, when confronted by two or more currents of popular opinion, of the expedient which was employed in certain of the cities of antiquity: the drawing of lots. Modern thought would not willingly confide the direction of public affairs to hazard.

Neither would it be any easier to refer to the arbitration of the wisest. The man who is wise in the eyes of some may pass for a fool in the eyes of others.

Yet when various opinions are formulated of a given question, it is necessary for the nation to take one side or another. What, amid the variety of opinions and the conflict of interests, is the necessary guiding thread? How, in this conflict of wills, are we to say what the nation itself desires? We must adopt a very simple law, without which no human society could exist: the nation must express its decision by a plurality of votes.

"Not being able to weigh heads, we must count them," writes a great contemporary philosopher, M. Alfred Fouillée. It is logical, when there is a conflict, that the majority should decide, not because it is the majority, but because

it represents more rights and more wills. So we say, in such a case, "We agree unanimously to abide by the majority." Such is the principle upon which the right of decision by the majority is based.

So what we call the will of the nation is not the universal will, which is impracticable, but the general will, and what we call the general will is the will of the majority.

Representative Government

But is it possible in a great nation for the opinion of the majority to find direct expression? Each time an act of sovereignty is necessary to the life of the country, is it possible to assemble all the citizens and to count their votes? This form of direct government was practised in certain ancient republics which contained a mere handful of electors; the laws were voted in the public place, the Agora or Forum; but it is obvious that all the members of a great nation cannot thus deliberate together.

"As in a free State," says Montesquieu, "every man who is reckoned to possess a free mind should be governed by himself, it is necessary that the people as a body should possess the legislative power; but as this is impossible in great States and is subject to many draw-

backs in small States, it is necessary that the people should do by means of its representatives whatever it cannot do by itself." Therefore the people, not being itself able to deal with its own affairs, chooses representatives. These representatives are not mere clerks; they do not receive an imperative mandate from their electors; they are not, like officials, merely instructed to act for the people; their mission is to legislate in the place of the people, within the limits of the attributions which the Constitution of the country allows them.

Sovereignty, indeed, is one and indivisible; it does not reside in an isolated electoral district, but in the whole nation. A group of citizens cannot therefore impose an imperative mandate upon a representative. It is to all the representatives united that sovereignty is delegated; they derive it from the nation as a whole, and no one has the right to alienate it by bestowing it upon a few electors.

The Nomination of Representatives.

Under the *ancien régime* the three orders sent representatives to the States-General. From 1302 to 1614 the elections of these deputies took place in a very complicated manner. Before the fifteenth century the elections were held

separately for each order: nobles, clergy, and Third Estate; they were afterwards held in common, and were then once again held separately. In the towns the electoral assembly comprised sometimes all the *bourgeois*, sometimes a certain number of notables arbitrarily chosen from each quarter of the town. In the villages, which were sometimes called to participate in the elections, those inhabitants who were subjected to the *taille*, and who were therefore known as *taillable*, formed the parish assembly. These local assemblies did not themselves elect the deputies directly. They elected only delegates, who, assembling at the chief town of the bailiwick, selected the actual representatives of the Third Estate.

When in 1789 the Constituent Assembly had to regulate the right of suffrage, it did not allow itself to be influenced by the old customs which had presided at its own birth. The Constitution of 1791 divided Frenchmen into two classes: those of one class enjoyed political rights, and were known as active citizens; they were those who paid a direct tax equal to the value of at least three days' labour, who were inscribed on the roll of national guards, and who had taken the civic oath; these alone had the right to vote; the others were admitted only to the exercise

of civil rights—that is, they were protected by the laws relating to contracts, marriages, successions, etc., but they took no part in elections; they were known as passive citizens.

The Legislative Assembly went a step farther toward universal suffrage. By a decree of August 11-12, 1792, it suppressed the classification of Frenchmen as active and passive citizens, deciding that in future all men would be admitted to the primary assemblies—that is, would have the right to appoint the delegates who themselves elected the representatives, who were not less than one-and-twenty years of age, had been domiciled for the space of a year in the commune, and who lived upon their own incomes or the product of their labour, but were not domestic servants.

I will spare you all the successive changes that were introduced in the determination of the rights of suffrage under the Constitutions of 1793, the year III, and the year VIII, under the Life Consulate, and during the First Empire. The Constitution of 1793 proclaimed the double principle of universal suffrage and direct election, but it was suspended in the year II by the Revolutionary Government. The Constitution of the year VIII also suppressed all conditions of suffrage (that is, the necessity of paying a tax).

But the political liberties thus conceded were purely illusory. Those to whom the right of suffrage was granted were merely able to draw up the lists of candidates, and it was the Senate which selected from these lists the members of the two assemblies: the Legislative Corps and the Tribunate. The Life Consulate and the First Empire aggravated this system. The national sovereignty was merely an idle word.

Under the Restoration the system of conditional suffrage was pushed to extremes. No one could vote who was less than thirty years of age and who failed to pay a considerable tax. Moreover, the more heavily taxed electors enjoyed the advantage of complementary representation. All political influence, in short, was reserved for the great landed proprietors.

The monarchy of July abolished the double vote which the richer citizens enjoyed under the Restoration; it also lowered the electoral limit of taxation, but did not suppress it; and these modest innovations exhausted its capacity for reform. Despite an ardent campaign on the part of the Liberal opposition, it refused even to enlarge the right of suffrage by the "addition of capacities" to the list of electors; in other words, it refused to assimilate with the tax-paying electors those who by reason of their

profession might be assumed capable of exercising political rights.

In vain did Lamartine, in the cause of electoral reform, deliver speeches of noble and generous eloquence; in vain did Dufaure, in support of the Liberal position, employ all the resources of his powerful dialectic. The royal Government was inflexible, and less than a year before the Revolution of 1848 Guizot, the Minister, stated that "there was no future for universal suffrage. A time will never come when it will be possible to call upon all human creatures to exercise political rights."

Universal Suffrage.

The future in which Guizot refused to believe was not, however, long in dawning. France had awaited it for many centuries; but after 1789 it was impossible that the principles of the Declaration of Rights should not sooner or later achieve their fullest consequences. The Constitution of 1848 proclaimed the victory of universal suffrage, and the electoral law of March 15, 1849, established the exercise of the popular right of suffrage, which was thenceforth to be inviolable. "There is one day in the year," said Victor Hugo to the Chamber in 1850, "there is one day on which the labourer, the

man who bears burdens, the man who breaks stones beside the road, judges representatives, Senators, Ministers, and the President of the Republic. There is one day in the year when the humblest citizen takes part in the vast life of the whole country, a day on which the feeblest feels within him the greatness of national sovereignty, a day on which the humblest feels within him the spirit of his fatherland."

Despite these noble words, the Government of Louis Napoleon and the Legislative Assembly attempted, in 1850, to step backwards. A law of May 31, 1850, required of electors the condition of a domicile of three consecutive years in the same commune or canton. This would have excluded from the vote a great number of working men who by the nature of their work were forced to make frequent removals. This attempt at reaction immediately aroused a general protest, and at the very moment of the *coup d'état* of December 2, 1851, Louis Napoleon, feeling the necessity of reassuring the public, which was uneasy and restive on account of these retrograde attempts, and wishing to colour the illegality of his undertaking with a semblance of democracy, decreed: "Article First. The National Assembly is dissolved. Article Second. Universal suffrage is re-established. The law of the 31st May is abrogated."

Since then universal suffrage has remained the law of French elections, and no one to-day would think of abolishing it.

The Suffrage—Right and Duty.

Universal suffrage is not merely the crude expression of number and force. It is founded at once on the right of the individual and the interest of the collectivity. You are a Frenchman; you are a part of the nation; you have liberties to safeguard for yourself and your children. If there were privileged citizens to whom the right to vote was confined, how could the rest make their voices heard? Why should the law impose silence upon the poor? Difference of wealth should not create a difference of rights. As for differences in intellectual capacities, it would not be just that they should have the effect of destroying civic equality. They are not voluntary; they are the work of nature or education. They are not, moreover, always very easy to determine. Finally, education, which is every day more widely distributed, tends more and more to lessen such differences.

But while universal suffrage is based on the individual right, it is founded no less on the social interest. Here, again, I cannot do better than cite M. Fouillée: "Each elector is himself, at the

moment of voting, the representative of the whole nation, which, in thus confiding a charge to him, imposes a duty. He should vote not only for himself but for other individuals and for the whole nation. This is the principle which ought to be inscribed upon the voting-paper, in order to remind him of his duty at the moment when he is exercising his right."

Participation in the political suffrage is therefore a veritable social function. All citizens invested with this function have a duty—the duty of exercising it. Compulsory voting is not as yet the law in France. But the obligation of voting is a moral obligation binding on every member of the nation. Those who abstain renounce all influence in the matter of affairs that interest them, and they betray the first of the duties imposed upon them by a life in the midst of society. Abstention is therefore both a piece of foolishness and a civic desertion.

As the vote is a social function, it follows that the law may, without affecting the universality of the suffrage, subordinate the exercise of electoral rights to conditions of age and sex or withdraw the benefit from unworthy citizens. In France the right to vote belongs only to adult males, and is withdrawn from certain condemned offenders. The exclusion of women is justified

only by considerations of opportunism or by the resistance of custom. In Anglo-Saxon countries the female suffrage does not encounter so many obstacles as in France. Women have the vote in several States of the American Union, in Australia, New Zealand, and in Norway; in England they may vote in municipal elections, and are even eligible, so that an Englishwoman may become the mayoress of a community

Methods of Scrutiny.

Theoretically, when the nation chooses its representatives it should form a single electoral college, of which each member would contribute, as one of a whole, to the election of deputies. But how can the electors of Marseilles know the candidates who live in Lille or Rouen? And how should we proceed in the cancelling of several millions of voting-papers, each bearing several hundreds of names? The law has, of course, been obliged to divide the national territory into a certain number of electoral districts.

Each of these districts elects one or several deputies, but in this election it does not exercise an individual right; it does not perform an act of local and individual sovereignty; it acts by delegation in the name of the whole body of electors. The representatives whom it

selects are not the representatives of Seine-Inférieure or Bouches-du-Rhône or Pas-de-Calais; they are the representatives of France.

When the election takes place by arrondissements, and each arrondissement elects a single representative, we say that the scrutiny is uninominal. This is the French electoral method since 1889. It puts the deputy into very close communication with the electors; it allows the latter to know him better, and makes it easier for them to supervise the execution of their mandate; but there is also this grave drawback, that it subjects the representative to local influences and tends to make him see the interests of the country in too fragmentary a fashion.

When an election takes place by department or by an even larger district, and involves several representatives, we say that it is held according to the scrutiny by list (*scrutin de liste*). It is a system which Gambetta strongly recommended, and which in his eyes had the advantage of favouring large movements of opinion; it was practised at the legislative elections of 1885 and abandoned four years later.

At present all elections in France are by majority. The representative elected is he who obtains, at the first ballot, the absolute majority—that is, the half plus one of the votes recorded

(provided that number attains to one-fourth of the electors inscribed on the register). If the first ballot gives no result, voting is repeated a fortnight later; and he who obtains the largest number of votes—that is, who has a relative majority—is declared elected.

I mentioned a while ago that where the country has to make a decision the law of the majority imposes itself as the very condition of social existence. From the moment the nation ceases to express its will directly, from the moment it appoints representatives who are instructed to form decisions in its name, it goes without saying that this law of the majority must apply to the vote of the representatives. They adopt all important political resolutions according to the vote of the majority. But is it just that they should themselves be selected by the bare majority of electors? Many eminent thinkers are of opinion that it is not. Elected assemblies, being charged with the representation of the country, ought, they think, to be a reduced image of the electoral body. "These assemblies," said Mirabeau, "may be compared to geographical charts, which ought to reproduce all the elements of the country with their proportions, without allowing the more considerable elements to eliminate the lesser."

This is the ideal of proportional representation: it has prevailed in certain foreign countries, notably in Belgium; in France it has obtained many convinced supporters, and a project for putting it into execution is at present in course of discussion.

Electoral reform is one of those questions which to-day must occupy the public mind. But although we may rightly seek to improve the independence of universal suffrage, and to improve its method of working, there is no discussion of the principle, which is henceforth unshakable.

THE CONSTITUTION

VI

THE CONSTITUTION

The Government.

We have seen that the origin of the public powers is in the nation. But is the nation to develop at hazard, with no definite line of conduct, no rule of life? Is the sovereignty which it has slowly conquered to be merely a capricious, disorderly force? Nothing in the universe endures save by harmony and order. From the stars, which follow their ordered courses through the immensity of the skies, to the ant, which, in its subterranean galleries, obeys secular instincts—all that is and all that moves is subject to natural laws. If the nation would fulfil its destiny, if it would exercise its sovereignty in the interest of its members, and if it would have the State acquit itself suitably of the thousand functions with which it is entrusted, it must either govern itself or be governed.

Among primitive peoples, barbaric or but

slightly civilized, the government, whether it be exercised by a single man or by many, is in general given to arbitrary action, even to caprice. It is not fettered by a fixed and determined statute; it may rate the public utility as it pleases, and serve it by any means that seem to it convenient. For one man of genius who accomplishes this difficult mission with success there are unfortunately a hundred second-rate or interested persons who mistake or betray the national interests.

Among the free peoples, therefore, who are truly conscious of their social obligations, despotism has been banished from the Government. But as the nation, as I have told you, cannot govern itself directly—as it is forced to delegate its various powers—as it would be absurd to leave these delegates unlimited liberty and authority without control, it imposes upon them certain general and imperative rules, which it alone has the right to revise, and which must be respected by all citizens until, if ever, they are abrogated.

These general rules are simply the laws, and those which relate to the organization of the government itself are organic or constitutional laws.

The laws are not merely the guardians of

order; they protect liberty. A country in which the sovereign, were it even the people itself, had the faculty of taking illegal measures against one single member of the community, would call itself free in vain; it would be condemned to servitude and oppression.

The Separation of Powers.

Every organism constitutes a whole whose parts co-operate in a common activity, by the aid of distinct but co-ordinated organs. In man the digestion, the circulation, and the respiration concur in the same object, which is life. Similarly, in society one of the conditions of industrial progress is the division of labour: there is no civilization without the collaboration of specialists in a general task. Again, in the government of a nation it is convenient to separate the various powers which are the attributes of sovereignty. Moreover, if those great peoples which have adopted representative government were to confide all the powers at once to a single category of representatives they would run the risk of seeing the sovereignty speedily confiscated at their expense. "It is the experience of ages," says Montesquieu, "that every man who has power is moved to abuse it. He goes forward until he finds his limits."

And with perfect reason Montesquieu adds: "If power is not to be abused, then it is necessary, in the nature of things, that power must check power." To separate clearly the essential manifestations of sovereignty and to trace the precise limits of the authority delegated to the representatives of the nation: here is one of the first necessities of constitutional organization.

The Declaration of Rights of 1789 expounded this principle in very lucid terms: "Every society in which the guarantee of rights is not assured nor the separation of powers determined has no constitution." And the Constitution of 1848 proclaimed that "the separation of powers is the first condition of a free government."

Among the powers which appertain to the nation, one of the most considerable is that of making the laws: that is, of enacting prescriptions or prohibitions of a general character, and of establishing sanctions and penalties. If you will reflect for a moment, the power of telling all the citizens of a country: "This is how marriage, property, inheritance, and contracts will be regulated" has something formidable about it. The legislative power, therefore, appears to be one of those whose prerogatives and operation the Constitution must determine with the greatest care.

But a people does not have to give itself new laws every day, while it must every day administer its affairs and apply the laws which have been enacted. Another attribute of sovereignty will therefore consist in what we call the executive power. The authority to which this power is confided cannot without inconvenience be confounded with that which makes the laws. The latter, no doubt, should control the former, but must neither annihilate nor absorb it. The legislative power calls especially for time, examination, and reflection; the executive power more especially demands rapidity, comprehension, and firmness.

But neither the legislative nor the executive power should be judge of the contentious difficulties which may arise from the application of the laws. "If the power of judgment," says Montesquieu, "were joined to the legislative power, their power over the life and liberty of citizens would be arbitrary, for the judge would be legislator. If it were joined to the executive power the judge would have the force of an oppressor."

Thus the principal flywheels of the constitutional mechanism work separately, but it is the national will alone that should set them in motion, and which will maintain among them the

correspondence necessary to the accomplishment of a common task.

CONSTITUTIONS.

The function of these various flywheels is fixed by the Constitution: that is, by an organic and fundamental law which we might call the law of laws, and which regulates the exercise of sovereignty over the country. It is not indispensable that this law should be written. It may be the tacit labour of years, custom, and tradition. Thus in England the greater part of the constitutional rules are still determined only by usage. But in general modern nations have consigned their constitutive principles to carefully drafted writings. Shortly before the French Revolution the United States of America afforded examples of these solemn enactments. When in 1789 the States-General, which the monarchy had not convoked since 1614, assembled at Versailles, they took the name of National and Constituent Assembly, and the first thought of this assembly was to elaborate a written constitution which should limit the royal authority, regulate the relations between the legislature and the executive, and protect France from the abuse of power. Since then the idea of the written constitution has in France remained inseparable from the idea of national sovereignty.

The Constitution

In 1814, when, after the defeat suffered by the Empire, the monarchy by divine right was temporarily restored, the King denied the French people the privilege of giving themselves a constitution; he arrogated to himself the privilege of bestowing upon his subjects, as a notable favour, a "charter"; he considered, in fact, that he was appointed from all time, by an especial decree of Providence, to be the sole depositary of the sovereignty. But no other ruler has ever dared openly to contest the nation's right to organize the public powers and to establish taxes.

The Constituent Power.

This faculty or right is called the constituent power. It is the beginning and the end and the very essence of sovereignty. A people which cannot organize itself is a people enslaved. The constituent power must not be confounded with the legislative power. Both belong to the nation, but it is not obliged to delegate them to the same representatives, and is free to subject their exercise to different conditions.

Thus in France the ordinary laws are discussed and voted successively in the two Chambers which compose the Parliament and represent the legislative power. The constitutional laws, on the other hand, are discussed, voted, or revised ac-

cording to an especial procedure, by the same two Chambers, united in exceptional session as one assembly for the purpose.

The constituent laws are of course not immovable, any more than are the ordinary laws. A people that gives itself a constitution does not bind itself thereto for an indefinite period. The national sovereignty, as I have told you, is imprescriptible and inalienable. The nation cannot permanently renounce it; if one generation were to make such a mistake the following would have the right to repair it. Thus a constitution may always be destroyed or improved; but the nation abdicates nothing of its omnipotence because it determines in advance the path to be followed in the exercise of its constitutional power. "It is against the nature of the social body," writes Rousseau, "to impose laws which it cannot revoke; but it is against neither nature nor reason that it can revoke them only with the same solemnity as that which saw their establishment."

If, therefore, we seek to define the constitutional laws we shall say that they are the organic laws, more important than the civil or penal laws, more important than administrative, financial, and social laws. They are not dependent on the legislative power, and they can be abrogated or amended only by the fulfilment of particular forms.

The Constitution

Brief History of the Republican Constitution.

In 1875, after many vicissitudes, the three great laws were voted which to-day form the Constitution of Republican France. As a matter of fact, the Republic had at that date already existed, in a precarious and uncertain shape, for more than four years.

After the disasters of the war, on the 8th of February, 1871, France elected by universal suffrage, in sorrow and distress, an assembly which was only able to discover a total absence of power, and which therefore found itself, by the nature of the case, omnipotent.

By the precise terms of the armistice which was signed on the 28th of January with a view to the elections, this assembly was appointed merely to decide whether it was possible to continue the war or necessary to submit to peace, so that the members composing it had not in general been chosen for their political or constitutional ideas.

But by the 17th of February, 1871, this assembly, elected in such terrible circumstances, was led to declare itself the depositary of the sovereign power, and wishing at least to guarantee provisional tranquillity to disabled France,

it voted the following resolution: "M. Thiers is appointed chief of the executive power of the French Republic; he will exercise his functions under the authority of the National Assembly, with the assistance of the Ministers whom he will have chosen and over whom he will preside."

Thus the Assembly, holding itself to be invested by the national will with the plenitude of sovereignty, surrendered the executive power to the most illustrious of its members, to him who had in advance denounced the folly of the war, who had endeavoured to retain for France the decreasing sympathies of Europe, and who had been sent in triumph to Bordeaux by the electors of twenty-seven departments. But the National Assembly, which nevertheless accomplished with notable patriotism a great work of military and financial revival, was chiefly a conservative and monarchical Chamber, and, long divided against itself, swept by political passions, it evaded the question for several years before it eventually decided to erect a definite constitution.

On the 31st of August, 1871, it consented to give M. Thiers the effective title of President of the French Republic. At the same time it declared him responsible to the Assembly, and as he remained a deputy as well as head of the

executive, it conditioned, while commencing to restrict, the right which it accorded him of entering the tribune.

On the 13th of March, 1873, it put some fresh touches to this bastard system: it detailed those discussions in which the President might take part, and endeavoured to distinguish between his responsibility and that of his Ministers. At the same time it voted an article thus conceived: "The National Assembly will not dissolve without having legislated: (1) upon the organization and mode of transmission of the legislative and executive powers; (2) on the creation and attributions of a second Chamber, which shall not enter upon its functions until after the dissolution of the present Assembly; (3) upon the electoral law." This was a promise of a constitution in the near future.

M. Thiers and the Vice-President of his Council of Ministers, M. Dufaure, felt bound in honour to execute these engagements. On May 19, 1873, the Government introduced a project for a republican constitution. Immediately interpellated, it was defeated on the 24th May. Thiers resigned, and the Assembly at once confided the executive power to Marshal MacMahon, Duc de Magenta. Then commenced contradictory proposals, attempts, and fumblings.

The Assembly hoped at first that the fusion of two royal dynasties represented by the Comte de Chambord and the Comte de Paris would enable it to re-establish the monarchy. It was the private desire of the majority of the representatives. But the interview at Frohsdorf resulted only in the discovery of a hopeless discord between the two pretenders, and the Assembly, surrendering its illusions, resigned itself on November 20, 1873, to consolidate for seven years the power conferred upon MacMahon. The law specified that this power should continue to be exercised with the title of President of the Republic and under the same conditions until such modifications as might be introduced by the constitutional laws; and it was also enacted that a commission of thirty members should be appointed within three days for the inquiry into these laws. Once again the Constitution was announced as imminent. But it was long before it was voted. Despite the disappointment of its monarchical hopes, the Assembly visibly shrank from a permanent organization which would ratify the republican form of government.

The Wallon Amendment.

M. Casimir-Périer (father of the future President of the Republic), hoping to force the

hesitating to declare themselves, demanded that the Republic should be declared the definitive government of France. His motion was rejected on July 23, 1874, by a majority of 41 votes. A few months later there was a new check. M. Laboulaye introduced M. Casimir-Périer's demand in another form. His motion was defeated, but this time only by 23 votes. Apparently the majority was tiring and resistance weakening. It was then, during the session of January 30, 1875, that the lamented M. Wallon in his turn introduced his famous amendment. I say famous, because every one knows of it; but I am not sure that every one knows its contents. You may have heard that by virtue of this amendment the Republic was established by a majority of votes. The reality is quite unlike the legend.

The Republic existed. It existed in fact, even by name, since Thiers and MacMahon had both legally borne the title of President of the Republic. But the Assembly, which had its own afterthoughts, disliked the idea of sanctioning this state of things by voting a constitution; and even while instituting the "septenniate" of M. MacMahon it preferred to reserve the future.

M. Wallon was careful not to repeat the

declarations of principle which MM. Casimir-Périer and Laboulaye had vainly endeavoured to introduce. He confined himself to proposing a resolution which would determine the method of electing the President of the Republic and the duration of his powers: "The President of the Republic is elected by an absolute majority of suffrages by the Senate and the Chamber of Deputies united as a National Assembly. He is appointed for seven years and he is re-eligible." This resolution, as you will see, went beyond MacMahon. It applied to the President, whoever he might be, present or future, and thereby implicitly contained the definitive recognition of the Republic. But it introduced no innovation; it merely ratified a pre-existing system which had issued with irresistible force from previous events, and which responded to the public will.

It is true that on the first division the Wallon amendment obtained only 353 votes against 332; but at the third reading, on February 24, 1875, the majority had grown like a snowball: it was 413 against 248, and on the following day, the 25th February, the whole project, put to the vote, was adopted by 425 votes against 254. The single voice of the first day had increased and multiplied.

The Constitution of 1875.

This law of February 25, 1875, is the first of three of which the sum, with partial modifications voted in 1879 and 1884, forms the present Constitution. It is this which conditions the organization of the public powers. It controls the exercise of the executive power, which it confides to a supreme magistrate, the President of the Republic. It refers the legislative power to two Assemblies, a Chamber of Deputies and a Senate.

A second law, which was voted on the eve of the first, but of which the promulgation was subordinated to the latter, determined the organization of the Senate.

Finally, a third law, which bears the date of July 16, 1876, determined the relations between the public powers instituted by the two previous laws. The President governs with his Ministers, who, being representatives of the executive power before Parliament and representatives of Parliament before the executive power, are responsible for their actions, and must resign when the agreement it is their duty to ensure is broken.

These three laws are not of great length. Unlike many of the older Constitutions of France, they do not determine the essential rights of

the individual in the State, and are silent in respect of the judicial power. These are regrettable lacunæ. But such as they are, the constitutional laws have given France the most stable and peaceable system of government that she has known for a hundred and twenty years.

Revision of the Constitution.

It does not follow, however, that sooner or later changes may not be introduced into this Constitution; and I have already stated that modifications were introduced in 1879 and 1884. The law of February 25, 1875, itself foresaw the possibility of such modifications and gave the country the means of effecting such without trouble and without shock. The Chambers have the right, by separate deliberation, submitted in each case to the test of a majority vote, of declaring that there is cause to modify the constitutional laws. When the two Chambers have separately passed concordant resolutions they unite to sit as a National Assembly in order to proceed to the work of revision. The National Assembly sits at Versailles. Its *bureau* consists of the President, the Vice-Presidents, and the Secretaries of the Senate.

The constitutional law of August 14, 1884, decided that the republican form of government

cannot in either Chamber form the object of a proposed revision. The Minister, Jules Ferry, who took the initiative of this measure, did not, of course, believe that a word inserted in a law could make the Constitution eternal. But he wished to put an end to the attacks, then incessantly renewed, of the enemies of the Republic. The practical bearing of this proposition is easily grasped. Any revision which would have for its object the substitution of a monarchical system for the Republic would be illegal and revolutionary. The head of the State would have the right, as it would be his duty, to refuse to promulgate such a law if voted.

You may suppose, however, that the strength of the Republic resides far more in the consent of opinion than in this constitutional prohibition. The changes which the form of government has undergone in France have not always been effected under the legal conditions foreseen and authorized by the Constitutions. They were for the most part the work of insurrections and *coups d'état*. But *coups d'état* and insurrections succeed only in a disaffected country, and at the expense of a discredited system of government. It is from the deliberate adhesion of the nation and the lasting confidence of the democracy that the Republic derives the best elements of its vitality.

THE PRESIDENT OF THE REPUBLIC

VII

THE PRESIDENT OF THE REPUBLIC

The Election of the President of the Republic.

The supreme representative of the executive power in France to-day is a President elected by an absolute majority of the suffrages of the Senate and the Chamber of Deputies united as the National Assembly. It is at Versailles, in a wing of the magnificent château erected by Louis XIV, that this election takes place. Let us enter the vast courtyard, separated from the Place d'Armes by a golden grille. We are surrounded by statues of marble which evoke all the ancient glories of France: Richelieu, Bayard, Colbert, Tourville, Duguay-Trouin, Turenne, Du Guesclin, Sully, Condé. Let us pass beneath the equestrian statue of Louis XIV and advance toward the Stairs of the Princes. Let us mount the three steps which precede the door on the left and enter. Here is a gallery of cloakrooms.

It is here that the Senators and deputies hang up their hats and overcoats. Let us go through this vestibule, which is ornamented by the busts of celebrated persons. We reach the hall of Congress almost immediately. It was constructed in 1875 in the courtyard of the Surintendance, when the Constitution divided the legislative power into two assemblies. It was at first intended to receive the Chamber of Deputies, which sat at Versailles from 1873 to 1879; but in the latter year both Chamber and Senate returned to Paris, and since then this vast hall has been devoted to the sessions of the National Assembly. It forms a great semicircle, and is surrounded by colonnades. Overhead the galleries of the public rise in tiers of seats; down here are the chairs reserved for the members of the Assembly. In the midst of the diameter of the semicircle is the tribune, from which speakers would address the Assembly, were Congress united to discuss a revision of the Constitution. When the Assembly is convoked for a Presidential election the members vote without discussion. The urn is then placed in the tribune, and as an usher with a silver chain calls their names in a sonorous voice the members of the Assembly pass in a file in order to deposit their ballot-papers.

The President of the session is the President of the Senate. Behind him hangs a fine tapestry after Raphael. On either side you will see a symbolical statue. One is a figure of Concord, the other of Security. The procession of voters lasts a long time; there are nearly nine hundred votes to be cast. When the voting is completed the scrutators, drawn by lot from among the members of the Assembly, count the votes in an adjoining hall. If no candidate has obtained an absolute majority of votes, the President announces a second ballot, and so on, if needful, until there is some result. The candidate elected is proclaimed by the President of the Assembly. There is applause and cries of "Vive la République!" and the Assembly dissolves. The new President, accompanied by the Ministers, re-enters Paris and instals himself in the Palais de l'Elysée.

CONVOCATION OF THE NATIONAL ASSEMBLY.

The President whom the National Assembly has just chosen is elected for seven years. He is re-eligible. Constitutionally speaking, there is nothing to prevent his being re-elected as long as he lives. But the long duration of powers can hardly be reconciled with the ideal of popular sovereignty, and the delegates of the nation

should not in principle be permanent officials. Re-election, therefore, would always be somewhat exceptional.

Let us suppose that the end of the seven years has arrived. It is necessary to proceed to a new election. How is the National Assembly to be convoked? The President in office is supposed to issue the convocation, and he should summon the Assembly at least a month before the legal term of his powers. If by some improbable chance he were to neglect this duty, the session would be held, according to a summons from the President of the Senate, a fortnight before the expiration of the Presidential powers.

Two Presidents of France died during the course of their magistracy: MM. Carnot and Félix Faure. Two resigned: M. Grévy before the end of his second presidency, M. Casimir-Périer shortly after his appointment. The Constitution had foreseen these two eventualities. In case of the decease or resignation of a President the two Chambers meet immediately with full powers. There may, however, be an interval of two or more days, during which France will have no President. During this short interval the Council of Ministers will be invested with full executive powers.

The President of the Republic

Since the Constitution of 1875 has been in force all the Presidential elections have been conducted by the National Assembly with imposing solemnity and perfect tranquillity.

Responsibility and Irresponsibility.

In order that the political liberty of a country may be guaranteed it is essential that the executive power may neither evade the laws nor make harmful use of its authority. It is necessary, then, that it should be responsible to the country. But how organize this responsibility? If the head of the State has to render an account of his doings directly to the nation, it is to be feared that any control over him will be merely illusory. The executive power, which commands the army and the administrations, will consult the electors only at a moment selected by itself, when it will ask the electors to state, by a yes or no, whether it has retained their confidence. No discussion can take place, and the reply to the questions put forward is, as a rule, neither free nor lucid. This is the great danger of plebiscites. They seem to ratify the popular sovereignty; but really they often serve to confiscate it.

Shall we, then, make the President of the Republic responsible to the representatives whose

duty it is to make the laws? France tried this system from 1871 to 1875, and found it had serious drawbacks. The head of the State brought to book for the most trivial incidents, forced to reply personally to daily interpellations, drawn into practising an individual policy, the stability of the executive compromised, the representation of France abroad interrupted—such would be the inevitable results of such responsibility.

Following the example of England, which solved the difficulty by transferring the responsibility from the King to the Ministers, in 1875 the Republic decided that its President should be responsible only in the event of high treason, and that, on the other hand, the Ministers, appointed by him to direct the great public services should be responsible to the Chambers as a solidarity in matters of general policy and individually for their personal actions.

This division of responsibilities is the great characteristic of the constitutional system which is to-day that of France, and which is known as the parliamentary system. The monarchy of July was based on an identical principle, which was formulated in these terms: "The King reigns but does not govern." The Ministers, in fact, being alone responsible, are those who

actually exercise authority; the President presides, but does not govern; he can form no decision save in agreement with his Ministers, and the responsibility is theirs.

Practically the same system is in force in constitutional monarchies; not only in England, but in Spain, Italy, and Belgium, and the substitution of ministerial for royal or presidential responsibility is regarded by many nations as the essential condition of the public liberties.

The President, therefore, exercises no power alone. Each of his proclamations must be countersigned by a Minister.

These Presidential proclamations are decrees and messages. The decrees contain prescriptions, orders, interdicts; the messages are addressed to the Chambers and the country.

The Execution of the Laws.

It is the President of the Republic who watches over the execution of the laws. When a law is definitely voted by the two Chambers it is not immediately binding on the country. It must first of all be promulgated—that is, the executive power must declare it effective, and must give the public authorities the order to ensure its general application, if need be by force.

If a law which has been voted displeases the President of the Republic, he cannot refuse or indefinitely retard its promulgation. He is obliged to promulgate it during the month which follows its transmission to the Government by the Presidents of the Chambers, or in some cases, if urgency has been voted, even within three days. In respect of delay, however, the President enjoys a right which since 1875 he has never exercised. He is free to require a second deliberation on the part of the Chambers by means of a reasoned message. If the Chambers persist in voting for the passage of the law, the President must give way. He has, in respect of legislation, no right of veto like that which the Constituent Assembly recognized as an attribute of Louis XVI, for which reason the King and Queen were nicknamed Monsieur and Madame Veto.

In order to supervise and ensure the execution of the laws the President issues general decrees, sometimes prepared by the services affected, sometimes further elaborated by the Council of State, and always countersigned by the Ministers. These are known as by-laws of public administration. They may complete the law as to points indicated by the legislator, but they cannot modify it.

The President of the Republic

National Solemnities.

The President of the Republic, states Article 3 of the constitutional law of February 25, 1875, presides over national solemnities. At all official ceremonies he personifies both France and the Republic. This representative function of his is not always free from danger. It was in performing such a duty that President Carnot fell under the knife of an assassin.

To meet the expenses involved by his magistrature the President receives £24,000 as salary and £24,000 as expenses of travel and representation. Under the Restoration the sum allowed to the King, known as the Civil List, was £1,280,000; under the monarchy of July it was £520,000; under the Second Empire £1,000,000. The President of the Republic is less generously treated. Besides this annual remuneration the State offers him a double residence—the Palais de l'Elysée and the Château de Rambouillet.

The Elysée, which with its fine gardens reaches from the Faubourg Saint-Honoré to the Champs-Elysées, dates from the beginning of the eighteenth century. It has had a varied history: it was inhabited by Mme. de Pompadour, by the financier Beaujon, and by Murat; it was thither

that Napoleon I retired after Waterloo and signed his abdication. The Emperor of Russia was lodged there in 1814 and 1815; there Prince Napoleon was installed on December 24, 1848, on the day on which he was elected President of the Republic; there he prepared the *coup d'état* of December 2, 1851. He then left the Elysée for the Tuileries. The palace was restored in 1855, and enlarged in 1889 by the construction of a vast reception-hall.

President Carnot used to pass part of the summer at Fontainebleau; but to-day the Château of Rambouillet is the Presidential residence in warm weather. It was built in the fourteenth century, and still retains, from the period of its origin, a massive tower with battlements and machicolations, but it has often been mutilated and restored. It contains some exquisite work in carved oak, dating from Louis XV, a boudoir of Marie-Antoinette, a bedroom of Napoleon I, and baths, decorated with fresco in lamentable taste. The great charm of the place is the French garden, with its magnificent piece of water, its beautiful avenues of lime-trees and ancient acacias; the English garden, full of every variety of exotic tree, and the enormous park, surrounded by high walls, planted with dense thickets and majestic

forest, peopled with abundant game, both fur and feather, predestined to be the scene of the great official "shoots."

The Government of the Interior.

Do not imagine that the President enjoys much leisure in these princely homes. On the contrary, his days are absorbed by a continual round of multiple functions.

According to the Constitution, he appoints all civil and military officers. But he exercises this prerogative, as all others, only in uniformity with the rules of the parliamentary system—that is to say, under the responsibility of the Ministers. He cannot make arbitrary selections. The law fixes conditions of age and aptitude which he is obliged to respect. It also devolves a certain number of subordinate appointments upon the Ministers, prefects, and heads of the public services. Only the more important officials are appointed by Presidential decree.

The President has the prerogative of mercy. If any one is condemned for a crime or misdemeanour, and if, by the circumstances of the case or by his subsequent conduct he deserves some indulgence, the President, upon the advice of a special commission and under the responsibility of the Keeper of the Seals, can grant him

a complete or partial remission of his punishment or commute it to a lighter penalty. This measure of favour, however, allows the record of the sentence in the judicial records, and does not affect the incapacities or the forfeitures which ensue therefrom. It is this that distinguishes pardon from amnesty. Amnesty is a general measure which does not depend upon the President, but upon the Legislature itself, and whose object is to efface, for the benefit of a whole class of delinquents, the direct or indirect consequences of the sentences pronounced.

The President controls the armed forces. Always on the responsibility of the Ministers he is entrusted with the maintenance of the order and security of France.

The President is Grand Master of the national Order of the Legion of Honour. By the sole fact of his election he wears the great sash or *cordon* of the Order, without having to pass through the inferior grades.

Relations with the Chambers.

The executive power has numerous points of contact with the legislative power. Concurrently with the two Chambers the President of the Republic has the power of initiative in legislation. But here, again, you must remember the

fundamental principle: if the President puts forward a projected law, a Minister must countersign it, and this Minister must then appear alone before the Chambers in order to support the project. The President cannot enter Parliament and takes no part in debate.

It is his duty, with the concurrence of the Cabinet, to convoke the Chambers and to terminate their sessions. In the accomplishment of this duty the Constitution leaves him but little latitude. If he does not convoke them sooner, the Chambers must meet at latest on the second Tuesday in January. The sessions of the two Chambers must open and close at the same time, and must last at least five months in the year. The President of the Republic can adjourn the Chambers; the adjournment may not exceed the term of one month, and it may not occur more than twice in one session. After the ordinary session of five months the President has the right to convoke the Chambers again; he is even obliged to do so should the absolute majority of the members composing each Assembly demand it. Extraordinary sessions, which the President may terminate when he thinks fit, have become as common in France as the ordinary sessions. They are held every year, and, as a rule, are devoted to the discussion of the Budget.

The President of the Republic wields a power of much greater importance; he can, by the advice, or with the agreement, of the Senate, dissolve the Chamber of Deputies before the legal expiration of its mandate. This right of dissolution does not in any sense resemble a monarchical prerogative. It is the natural guarantee of the separation of the powers. A Chamber appointed for a determined time may in the course of its mandate forget the promises which it has made to the country, may disregard the interests which are confided to it, or seek to usurp powers which do not belong to it. If it were nevertheless able to continue in the fulfilment of its functions, it would present a spectacle of impotence and disorder. The better to defend itself against encroachments and abuses, the executive power should have the resource in such cases of enforcing a fresh consultation of the electors. The use which was made of this right of dissolution in 1877 by the Government of the 16th May has somewhat discredited this portion of the Constitution; however, it does not deserve the unpopularity which resulted from the event in question.

Foreign Relations.

In international relations particularly the President of the French Republic plays a part of

capital importance. In respect of foreign Powers he is the unique and permanent representative of France. The envoys and ambassadors of these Powers are accredited to him by their respective Governments.

It is the President who negotiates and ratifies treaties. He negotiates them through the medium and the responsibility of the Minister of Foreign Affairs. He ratifies them—that is, he confirms them after their conclusion. He may keep them secret, if the interest and security of the State so require, acquainting the Chambers of them only when he considers it opportune.

This right, in the hands of the head of the State, would be dangerous were it not tempered and limited by the rights of Parliament. Thus the Constitution adds: "Treaties of peace and of commerce, treaties which involve the finances of the State, and those which relate to the personal status and the rights of property of French persons abroad, are not definitive until they have been voted by the two Chambers." The exceptions are so numerous that they become the rule. There remain a few international conventions which the executive power has the right to confirm without previously obtaining their adoption by the legislative power.

There are still, however, some very im-

portant conventions which depend only upon the President. Such are military conventions and treaties of alliance, provided that they do not necessarily involve a budgetary expenditure. The understanding between France and Russia has never been made public. It is probable that the Imperial Government would not have adhered to it had it known that the terms would be divulged. The French Government itself considers that an untimely revelation would have hindered its diplomatic activity. The understanding is no less effectual.

With or without a treaty no cession, no exchange, no addition of territory can be effected except by virtue of a law. In the process of attacking a hostile people the French troops conquered a new colony in the centre of Africa. If the Government intends to confine itself to establishing a protectorate, a governmental enactment will suffice; but if the sovereignty of France is to be extended over the conquered territory a law will be necessary.

Declaration of War

The President of the Republic cannot declare war without the assent of the two Chambers. This important question of the right of declaring war was one of those which were most

passionately discussed by the Assemblies of the Revolution. It was the subject, under the Constituent Assembly, of many memorable debates, in the course of which Mirabeau pronounced one of his most famous speeches. It was dealt with in various manners by the Constitutions which succeeded one another after the year 1791. The Royal Charters of 1814 and 1830, and the Imperial Constitutions of January 14, 1852, and May 21, 1870, reserved the right of declaring war to the head of the State. The Constitution of 1848 withdrew it. To-day, were France forced to unsheathe her sword, the President of the Republic would signify the declaration of war, but he could not proceed to this extremity unless expressly authorized by the Chambers. Previously it would be his right and his duty to take all those measures of defence which the situation would demand; but he would not be free to engage in hostilities. The Constitution intends that after so many cruel trials France should henceforth be the mistress of her own fate.

IMPEACHMENT.

That the President should not be called upon to account for the ordinary conduct of public affairs, that he should not be personally

harassed by the Chambers, that his independence should be protected—all this is very desirable. But what if he should violate the laws? What if he should rebel against the Constitution? What if, like Prince Napoleon on December 2, 1851, he should effect a *coup d'état?* Would the nation be disarmed? Would it be forced helplessly to assist in the destruction of its liberties? However improbable these dangers might henceforth seem to be, the Constitution has foreseen them. In such a case the Chamber of Deputies would have the right to impeach the President of the Republic, and he would be tried by the Senate. The Senate would have the power to proclaim his dismissal and also to inflict, should there be occasion, the sentence established by the penal laws. Let us hope that there never will be occasion to execute this measure of public safety.

THE MINISTERS

VIII

THE MINISTERS

The Sense of the Word.

A few years ago one of my friends, at the time Minister of Finance, was walking, during the parliamentary vacations, in the neighbourhood of Mont-Dore, when he heard, at a few paces distant, an Auvergnat peasant, who cried, in an aggrieved tone of voice: "Get along, devilish Minister!" Less surprised at being insulted than at being recognized, he turned, and saw, upon the roadway, a man pushing at a donkey, endeavouring to make it budge. He spoke to him, questioned him. "What's a man to do?" replied the peasant. "There's no making this *minister* go!" He was addressing the animal, not the man. My friend, much relieved, learned without bitterness that in certain corners of France an ass is called a *minister*, because he is, in reality, a servant entrusted with important duties. Etymologically the word has not so

noble a significance. It means, in Latin, the smallest, just as *magister*, or master, means the greatest. And, after all, are not Ministers the servants of the nation?

The Frankish Monarchy.

The Frankish King had about him a certain number of personages who fulfilled, more particularly in the palace, various domestic duties, but whom he was also accustomed to consult in respect of public affairs.

The seneschal was the intendant of the household; he was told off to the service of the stomach. After him came the marshal, who had the care of the stables; the treasurer, who looked after the money-chest; and the cupbearer or bottler (butler), who kept the wines. We may add to this list the Count of the Palace, upon whom the administration of justice depended, and the Mayor of the Palace, or *majordomo*, the first officer of the household.

Carolingians and Capets.

Gradually these functions were transformed. The seneschal came to superintend both warfare and justice, until the day when Philippe Auguste found him somewhat inconvenient and suppressed the office (1191). The marshal was replaced

by the constable (count of the stables, *connétable*). But the constable was not long content with his position as master of horse. He presently succeeded the seneschal as commandant of the royal armies in time of war. He was less a Minister than a generalissimo.

The officer of the King's household who extended his authority with the greatest perseverance was the Chancellor, who had the care of the seal of France. In the beginning the head of the Chancellery was usually the Archbishop of Reims, and his duties were really performed by the first notary, whose place it was to receive the royal enactments. Gradually the importance of this official increased; the seneschal abandoned his judicial attributions in his favour, and the Chancellor became the general superintendent of justice and the head of the magistracy. It was he who prepared and drafted most of the royal ordinances, which at that time had all the force of laws.

The Absolute Monarch.

As the kings of France gradually gathered authority into their own hands they began to grow jealous of these great officers of the Crown, who might easily prove embarrassing; they suppressed the Constable, and although they retained

the Chancellor they created a certain number of additional agents to limit his powers; these were at first known as the "secretaries of the commandments of the King," and from the sixteenth century they took the title of Secretaries of State. These Secretaries of State were true Ministers, responsible to the King. They became extremely powerful, especially under Louis XIII and Louis XIV, and they brought upon themselves the hatred of the nobility. On the death of Louis XIV, in 1715, the Regent endeavoured to appoint the great *seigneurs* of the kingdom to the administration of public affairs; but the Secretaries of State had so fully understood the art of making themselves necessary that the Crown was forced to return to them.

The Revolution.

By the terms of the law of May 25, 1791, the Ministers became responsible for their actions to the representatives of the nation. This was the first appearance of the modern idea. The Ministers were appointed and dismissed by the King, and they had to be selected outside the Assembly.

Under the Convention and the Terror the Ministers were nobodies; the Government was carried on by executive commissions, which were

directed by the Committee of Public Safety. The Constitution of the year III re-established the ministerial departments, but the importance of the Ministers themselves remained insignificant. Chosen by the Directory, they did not form a council and were independent of the Assemblies.

The Constitution of the year VIII declared that the Consuls were irresponsible, as the President of the Republic is to-day, but every enactment emanating from them had to be countersigned by a Minister, and the Ministers were responsible in certain clearly defined cases. Unhappily, they were responsible to the Assemblies, which in no sense represented the nation, so that political liberty did not exist. You may remember Bonaparte's remark to Roederer: "A Constitution should be short and obscure." This intentional obscurity made it possible to annihilate the powers of the Ministers and to turn them into mere head clerks.

Under the Empire there were no more Ministers; they were replaced by such high dignitaries as the Arch-Chancellor of the Empire, the Arch-Treasurer, the Constable, the High Admiral. A certain number of these were men of great worth, but they could do no more than execute the will of their master.

The Responsibility of Ministers.

Ministerial responsibility was introduced under the Restoration and the monarchy of July. It was not as yet complete, for the Chambers to which the Ministers were responsible were not elected by universal suffrage. The Second Empire, having stifled the parliamentary system, endeavoured to revive it a short time before its own downfall, and we know that in 1875 the principle of ministerial responsibility was finally ratified by the Republican Constitution. To-day each Minister is accountable to the Chambers for his own personal actions, and they are all responsible as a body for the general policy which they are following.

Their Appointment.

It is the President of the Republic who appoints the Ministers. But he does not really select them. He confines himself to appointing the President of the Council. When a ministerial crisis occurs—that is, when a Ministry, having been put in a minority by the Chambers upon an important question, considers it its duty to retire—the President of the Republic consults the politicians who seem to him best qualified to advise him upon the situation, and notably

the Presidents of the two Chambers. He then summons the man to whom the circumstances seem to point as the leader of a fresh Government. He may apply to a Senator, a deputy, or to a man who does not sit in either Chamber. If, after conferring with the President, this personage will accept the mission which is offered to him, custom demands that he shall choose his colleagues as he thinks fit.

When the Ministry is formed the President of the Republic appoints the President of Council by decree, with the countersign of the President of Council retiring, and he appoints the Ministers with the countersign of the new President of Council.

Their Number.

The body of Ministers thus formed is known as the Cabinet. The Constitution of the year III decided that it could not contain less than six Ministers or more than eight. That of 1848 specified that the number of Ministers and their attributions should be determined by the Legislature. The Constitution of 1875 is silent upon this point.

This silence has made it possible to create several new Ministers. There has been much discussion as to whether the right of creation

belonged to the executive or the legislative power. In practice the agreement of the two powers is necessary; a decree might appoint a new Ministry in vain if a law did not grant the necessary supplies.

The President of Council chooses the ministerial department to which he is best suited. If he is not Minister of Justice, then the Minister of Justice is Vice-President of the Council; he is the head of the magistrature, the President of the Council of State, the Keeper of the Seals of France, and therefore the successor of the Chancellors of the *ancien régime*. He is, so to speak, the Minister of Right and Truth.

The Minister of Foreign Affairs is entrusted with the relations of his country with other nations; he gives instructions to our ambassadors; the consuls whose duty it is to protect the industrial and commercial interests of Frenchmen out of France are also under his orders. He is, you may say, the Minister of Peace and Honour.

The Minister of the Interior has under his direction the prefects, the departmental administration, the penitential administration, and all such public establishments as hospitals and asylums, the police, and the detective service. He is the Minister of Order.

The Ministers

The Minister of Finances prepares the budgets, directs the great services of registration, taxation, direct and indirect, Customs, and State manufactures. It is he who pays the pensions of retired officials. It is he who has charge of the public finances. He defends the interests of the State against the attacks of private interests. He is, you might say, the Minister of Economy.

The Minister of War is the organizer of the national defences. He takes care that the troops of all arms are suitably exercised, that there is no lack of arms, nor funds, nor victuals, nor forage, nor cannon, nor munitions of war, that all strongholds and fortifications are in a condition to resist the enemy, and that we are ready to meet all eventualities.

The Minister of the Marine has a similar mission in respect of the naval forces and the fleet. Ironclads, cruisers, torpedo-boats, submarines, and arsenals—all are in his care.

The Minister of Public Instruction and the Fine Arts is the Grand Master of the University. He directs the three orders of education: primary, secondary, and superior. He distributes awards to encourage men of letters and artists.

The Minister of Public Works is the chief of the department of communications and transport. Railways, highways, and canals are his province.

At the present time the service of Posts and Telegraphs is attached to his department, and, logically, should never be divorced therefrom.

Formerly Commerce and Agriculture were confounded with Public Works. There is to-day a Minister of Commerce, who superintends commercial education and endeavours to develop the commercial activity of the country. There is also a Minister of Agriculture, who directs agricultural education, encourages the culture of various crops, administers breeding-studs in such a way as to improve our strains of horses, maintains the State forests, superintends the care of the communal forests, and at need re-afforests regions devoid of timber.

The authority of the Minister of the Colonies extends over vast colonial territories in all parts of the world.

The Minister of Labour, the last created, has absorbed some of the departments of the Interior and of Commerce, and has added thereto all that concerns social assurance and thrift and foresight.

The Council of Ministers.

Several times a week the Ministers meet in Council. As a rule there are two sessions under

the presidency of the President of the Republic and one under the presidency of the President of Council. To the two former sessions only does the expression "Council of Ministers" apply; the meeting which is held in the absence of the President of the Republic is known as a Cabinet Council. The Council of Ministers deals with the more important business, the Cabinet Council with current questions of internal politics. The total duration of these meetings is rarely more than nine hours a week. This is not long to examine all the great problems which arise from the government of such a country as France, especially when nearly the whole time is taken up by the consideration of parliamentary debates. Each of the Ministers in turn expounds the measures of general interest which pertain to his department, and submits them to discussion by his colleagues. Sometimes the law indicates the subjects to be dealt with by the Council of Ministers. Thus the Council of Ministers issues the decree which dissolves a municipal council: it also appoints the Councillors of State. But as a rule the Minister interested is the sole judge of questions which, by their importance, deserve to be submitted to the Council. Unless ministerial solidarity is to remain an empty phrase, it is essential that everything which really concerns

the activity of the Government should be the object of deliberation in Council.

Neither the Councils of Ministers nor the Cabinet Councils keep minutes of their proceedings. The President of Council or the Minister of the Interior simply communicates to the Press a brief summary, from which all mention of the graver questions is usually omitted.

The Day's Work of a Minister.

The conscientious Minister has his day well filled. In the morning, when he enters his study, he finds a formidable mass of correspondence on his desk. The correspondence which is not addressed to him privately is of course opened and examined by employés, but a large number of letters remain which he is compelled to read through. Most of these come from Senators or deputies, who have acquired the annoying habit of recommending candidates for every species of post. Shortly before nine o'clock the Minister gets into his coupé or motor-car, the coachman or chauffeur of which wears a tricolour cockade. He is driven to the Elysée if there is a Council of Ministers, or to the Ministry over which the President of Council presides if there is a Cabinet Council. The Council sits till midday. On days when it does not sit the Minister receives

officials or members of Parliament. There is an interminable procession of people soliciting favours. After lunch the Minister goes to the Chamber or the Senate. When he returns he finds all the desks and tables in his office loaded with great portfolios, crammed with every kind of document. These are letters or proposed decrees prepared by the different services of his department and awaiting the ministerial signature. If he does not choose to sign them blindly, he must spend long hours in looking into the different affairs. He then receives the chief officials of the Ministry, who come to discuss the more delicate matters of current business. To acquit himself decently of a task so heavy and so varied, it is not enough to possess method; lacking a great aptitude for work and a rare promptness of judgment, he will be merely the plaything of Parliament or the tool of his departmental bureaux.

Official Ceremonies.

When a Minister represents the Government at a ceremony of any kind, in Paris or in the provinces, the troops are turned out in his honour. Great as is the importance of the army, it does not constitute an independent power in the nation; it is subordinated to the civil power;

it is the force which defends the country, and at need enforces respect for the laws. When the Government is anywhere officially represented, it is therefore fitting that the submission of the army should be manifested in a symbolic form. The external signs of this submission are noble and impressive. The garrison is under arms; the troops are formed along the route of the ministerial party; drums beat and bugles peal across the fields; the trumpets sound the march, the bands play the *Marseillaise*. The commandants of the troops and the officers salute with sword or sabre. Flags and standards also give the salute; and a guard of honour of sixty men, commanded by a captain, is sent to meet the Minister; it also furnishes two sentinels.

In the Chambers.

The constitutional law of July 16, 1875, enacts in Article 6: "The Ministers have the right of entry in the two Chambers and must be heard when they demand a hearing." Thus a Minister who is a Senator may speak in the Chamber of Deputies; a Minister who is a deputy may ascend the tribune in the Senate; and a Minister who is neither Senator nor deputy can be heard in either Chamber.

Ministers therefore intervene in the work of

legislation. They support the projects of laws which they have introduced; they give their advice as to proposals initiated by Parliament; they oppose resolutions and amendments of which they do not approve. As it would be difficult for them to have cognizance of all the matters in debate, they may be assisted by administrative delegates appointed for the discussion of any particular law projected, by decree of the President of the Republic. These auxiliaries are known as Commissaries of the Government.

Questions and Interpellations.

Ministers, being responsible to the Chambers, may be questioned or interpellated upon the acts of their administration. When a question is put to a Minister he is free to reject it and to give no reply; but he has not the right to evade an interpellation put into writing by the President of the Assembly. The most that he can do is to demand the adjournment of the discussion. An interpellation in respect of internal politics is never adjourned for more than a month. The deputy who brings forward the interpellation develops it, and the other members of the Assembly take part in the debate, if they think fit, and the matter ends with the proposal of a

parliamentary resolution, which is known as an "order of the day," "The Chamber, making note of the declarations of the Government," or "counting upon the Government to . . ." or "confiding in the Government. . . ." If an "order of the day" in conformity with the desire of the interpellated Minister is not adopted, the Minister is defeated; he retires, and offers his resignation to the President of Council. If the interpellation involves the general policy of the Cabinet and the "order of the day" is unfavourable, the entire Ministry is under the moral obligation of resigning.

Arraignment or Impeachment.

We have seen that in case of high treason the President of the Republic can be impeached by the Chamber of Deputies and tried by the Senate. The Ministers also may be impeached by the Chamber of Deputies "for crimes committed in the exercise of their functions," and in this case also the Senate constitutes a court of justice. What are the crimes which the Constitution has in mind? Are they offences or crimes against the common law merely, such as assassination, theft, abuse of trust, etc.? The Constitution does not enter into details, and we are authorized to take the word in the widest sense. Demands for

impeachment inspired by grievances of a political order have been uttered on several occasions since 1875; and although none of these demands were complied with, it was not because they were not considered legitimate; it was simply that the Chamber thought fit to reject them for reasons of fact.

Civil Responsibility.

Political responsibility and penal responsibility we have dealt with. But is this all? May not a Minister also be declared civilly—that is, pecuniarily—responsible for damage which his personal mistakes may have caused the State? The question has been put several times since 1875. In particular it arose in respect of the execution of a law which concerned the installation of the *Cour des Comptes*. A Minister had imprudently declared that a sum of £100,000 would be sufficient. It was almost immediately exceeded. Several years later the Chamber invited the Government to bring an action against the then ex-Minister. But it was perceived, upon consideration, that no jurisdiction was legally competent to try an action of this kind, and the matter ended in 1887 by the voting of a retrospective and purely academic condemnation.

Since then the question has remained in the

same obscurity. It would, however, be convenient that a law should submit, either to the Senate, the administrative tribunals, or the ordinary courts of law, the question of the pecuniary redress which the State might enjoy against Ministers guilty of error or imprudence.

THE CHAMBERS

IX

THE CHAMBERS

The Legislative Power.

Before 1789 the power of making laws and the power of ensuring their execution were confounded. The King exercised both. The Constituent Assembly put an end to this mixture of attributions. The decree of October 3-5, 1789, decided that the legislative power should reside in the National Assembly. The right of sanctioning the laws, however, was reserved to the King. After the events of August 10, 1792, this royal prerogative was suppressed, and the law became active by the vote of the Assembly only.

The Convention exercised the legislative power without any restriction. The Constitution of the year III divided it between the Council of Five Hundred and the Council of Ancients, and the latter had the right of veto over the enactments of the former. Under the Consulate the right

of initiative was reserved by the Government alone; laws were discussed by an assembly known as the Tribunate and voted by another known as the Legislative Corps. Under the First Empire the faculty of debate was apparently restored to the Legislative Corps, and the Tribunate was suppressed; in reality the Emperor, assisted by the Council of State, exercised the legislative power.

The Restoration brought with it the seed of liberty. The Charter gave the King the privilege of presenting, sanctioning, and promulgating the laws; the Chamber of Deputies and the Chamber of Peers had the right to debate and vote upon the laws. The Revolution of 1830 enlarged the powers of the Chambers. But, as you may remember, there was as yet no universal suffrage. The Constitution of 1848 gave the Assembly of Representatives the exclusive exercise of the legislative power. The President of the Republic could only provoke a second consideration of a proposal. Under the Second Empire there was a fresh eclipse of political liberties. The Council of State drafted the projected law; the deputies debated it and voted for or rejected it, but had not the power to amend it. The Senate had a right of veto and the Emperor a right of sanction. At the

end of the Empire a little fresh air penetrated the Constitution. The right of proposal and amendment was restored to the Legislative Corps, but, on the other hand, the veto of the Senate was fortified and extended.

After the Franco-Prussian War the National Assembly exercised the legislative power in all its plenitude; however, it conferred upon the President of the Republic the right of requiring a second deliberation. When it elaborated the Constitution of 1875 it divided the legislative power between two assemblies, the Chamber of Deputies and the Senate, and left the President of the Republic the faculty of requiring the two Chambers, within the term which must elapse before promulgation, to proceed to a fresh deliberation of any law to which he objected.

Election to the Chamber of Deputies.

The Chamber of Deputies is elected by universal suffrage. Every elector is also eligible once he is twenty-five years of age. The poor man may be elected as readily as the rich. Certain officials, however, are ineligible in the districts under their authority; a prohibition intended to guarantee the independence of the electors and the loyalty of the count. Soldiers and sailors cannot be elected, whatever

their rank; a prohibition enforced from the desire to keep the army out of political disputes. Members of families which have reigned over France in the past may not accept an elective mandate; a prohibition based on the fear that they might foment plots against the Republic within the Assemblies.

Besides these cases of ineligibility there are cases of incompatibility. The exercise of public functions remunerated by the funds of the State is on principle incompatible with the deputy's mandate. This rule, intended to guarantee the liberty of those elected, is subject to a few exceptions, which recent laws have rendered less and less numerous.

Deputies, who are now elected by the vote of an arrondissement, are appointed for four years. At the end of this period the Chamber is wholly renewed.

The Election of Senators.

The Senate is composed of 300 members. According to the Constitution of 1875 this number comprised 75 Senators appointed for life, by the National Assembly in the first place, and then by the Senate itself. To-day the 300 Senators are appointed for nine years, in the chief town of each department, by an

electoral college, formed as follows: the deputies of the department, the general councillors, the councillors of arrondissements, and, finally, the delegates of the municipal councils. The Senate thus represents not only the individual interests of French citizens, but also the collective interests of the municipalities. It is, according to a famous remark of Gambetta's, the Great Council of the Communes of France.

As you will see, the Senators are not elected directly by universal suffrage, but all their electors are so elected, or are in turn the delegates of those so elected; so that the whole nation does indirectly participate in the formation of the Senate.

No one can become a Senator unless he is at least forty years of age. The Chamber of Deputies may be entered by young men of twenty-five. The Constitution intended that the Senate should form a counterpoise of experience and maturity.

The ineligibilities and incompatibilities are today almost the same for the Senate as for the Chamber.

Each of these two assemblies is the sole judge of the eligibility of its members and the regularity of electoral operations. Each Chamber verifies its own powers. Each assembly verifies

the powers of its members and declares their elections valid. In this delicate mission, which is, so to speak, of a judicial order, they cannot display too much deliberation and impartiality.

The Staff of the Chambers.

Each Chamber elects in full liberty the staff, or, as it is called, the *bureau*, which directs its debates: President, Vice-Presidents, Secretaries. Under the Restoration the King himself selected the President of the Chamber from a list of five members. Under the Empire the head of the State chose the President of the Legislative Corps from among the deputies. These restrictions would be inadmissible under a republican system. The President is in effect the natural guardian of the rights and dignities of the Assembly. It is his duty to represent it in its relations with the other powers. It is his duty within the Chamber to protect the liberty of the tribune, and to ensure that the members respect the disciplinary regulations which the Chambers impose for the sake of order in debate. The President of the Senate is the second personage in the State. The President of the Chamber is the third. Both take precedence before the President of Council.

Publicity of Sessions.

The Constitution of 1875 proclaims an important principle upon which depends the efficacy of the nation's control of its elected representatives: "The sessions of the Senate and those of the Chamber of Deputies are public." When the States-General assembled in 1789 the place of their sessions was for a time surrounded by armed troops, and the public was forbidden to enter. The Assembly protested on the 25th June, in the name of political liberty, and sent the King a deputation instructed to communicate its grievances. The Constitution of 1791 ratified both the publicity of debate and that of the minutes or records of the Assembly.

Under the Revolution spectators of the sessions of the Assembly often interfered in the debates, mingling their murmurs or their applause. Instead of tending to guarantee the liberty of discussion, this influx of the public became a cause of disturbance and a menace to the independence of the representatives. In reaction against these excesses the Constitutions of the year III and the year VIII limited the number of those who might enter.

The sessions of the Senate under the First

and Second Empires, and those of the House of Peers under the Restoration, were secret.

The Constitution of 1852 also forbade the reproduction of any report of the debates in the Chamber of Deputies other than the minutes drawn up by the President.

To-day the public is admitted so long as there remain vacant places in the galleries of both Chambers; the publication of reports of debates by the Press is entirely unrestricted; and although the Constitution still recognizes the possibility of either Chamber constituting itself as a secret committee, this exceptional right has fallen into disuse.

The Palais-Bourbon is a building with a Corinthian peristyle, which rises on the left bank of the Seine, facing the Pont de la Concorde. On this site the Dowager Duchess of Bourbon, at the beginning of the eighteenth century, built an *hôtel*, whose principal entrance you may still see in the Rue de l'Université. In 1790 the palace became the property of the Revolutionary Government and gave asylum to the Ecole Polytechnique. A great hall was then built for the sessions of the Council of Five Hundred. The Greek portico was built under the First Empire. The present hall is the work of the architect Joly; it was opened in 1832. It was

adorned with twenty Ionic columns of marble with gilded capitals. The vault is decorated with caissons and arabesques. Statues symbolize Liberty, Public Order, Reason, Justice, Prudence Eloquence. These are the happy auspices under which the Chamber labours.

Yesterday, perhaps, the members were debating a measure affecting business. The session was calm and serious. This afternoon there is an interpellation. The galleries and tribune are full of spectators, the majority of whom are ladies. People come hither as to a theatre for amusement, and this curiosity is perhaps not always in the best taste. Listen to the speaker now addressing the Chamber. He is an orator of great talent. There is no lack of talent in our assemblies, and I do not think parliamentary eloquence has ever been so flourishing as today. But now another deputy takes his turn to speak; and now another, and after him yet others. The Chamber is wearied, grows impatient, becomes nervous and uproarious. Follow me: I will lead you to a more peaceful environment. It is the Palais de Luxembourg, where the Senate deliberates.

It is situated in the Rue de Vaugirard, at the end of the Rue de Tournon. It was built during the first years of the seventeenth century for

Marie de Médicis, and transformed under the First Empire and the monarchy of July.

During the Revolution it served as a prison, and Hébert, Danton, and Camille Desmoulins were confined there. Under the Directory and the Consulate the Luxembourg was the home of the Government. The First Empire installed the Senate there; the Restoration, the Chamber of Peers. In 1852 it was once again employed for the sessions of the Senate, and since the year when the Chambers returned to Paris from Versailles—that is, since 1879—it has been the Palace of the Republican Senate.

Let us pass by the bedchamber of Marie de Médicis, however we may be tempted to admire its beautiful ornamentation. Let us ascend to the vast and magnificent Throne Room, all decorated with tapestries and glittering with gold, which is to-day the Hall of Conference. Thence by means of corridors we gain the galleries and the hall where the sessions of the Senate are held. It opens before us in a semi-circle, and is notable for its fine wood-carving. The Senators are seated, attentive and silent, in arm-chairs, upholstered with red velvet. A Senator is addressing the thoughtful and somewhat frigid assembly. The President has no difficulty in preserving tranquillity. He is almost

as motionless, beside his bell, as the statues which surround him: those of the great Chancellors or Ministers of other days—Turgot, d'Aguesseau, L'Hôpital, Colbert, Molé, Malesherbes, Portalis.

Parliamentary Immunities.

Senators and deputies are free to speak and vote according to their convictions. The Constitution itself is careful to state that none can be prosecuted or called to account for the opinions expressed or votes given in the exercise of his functions. The independence of those elected by the people in respect of the executive and judicial powers is guaranteed by another immunity. No member of the Chambers can be prosecuted or arrested for a presumptive crime or misdemeanour during the course of a parliamentary session, save by the authorization of the Assembly of which he is a member. There is no exception save in cases of *in flagrante delicto*. The object of this rule is not to grant the representatives an inviolability which sets them above the law, but to prevent any Government from removing political adversaries from their legislative labours by means of arbitrary accusations. Even when the Chamber refuses the authorization to prosecute the immunity is only provisional,

and when the session is over the representative is only a citizen like other citizens.

Payment of Representatives.

The French Revolution, inspired by a sentiment of democratic equality, and thinking that the political mandate should be accessible to all, wished the elected representatives to receive payment, which payment was to be charged upon the nation. The Republican Constitution of 1848 admitted the same principle, and the better to ensure the identity of the individual positions of representatives forbade the latter to refuse payment. The Constitution of 1875 did not reproduce this rule, but the idea of uniform payment has been maintained by law. This payment, which is the same in both Chambers, was £360 until 1906; it has since then been increased to £600.

Initiative and Completion of Laws.

We have already seen that the right of proposing laws belongs alike to the President of the Republic—that is, the Cabinet—and to the members of the two Chambers.

A draft or projected law introduced by the Government is made the object of a Presidential decree, countersigned by the Minister

or Ministers interested. A proposition put forward by a Senator or a deputy is simply entrusted by him to the bureau of the Assembly.

The draft law is then referred to a commission, composed of a variable number of members instructed to examine it.

The proposition is in the first place submitted to a commission known as the Commission of Initiative, which concludes whether it shall or shall not be considered. If it is to be considered, it is referred to a second commission, which thoroughly examines it.

The commissions may amend either projects or propositions; they state the result of their labours in a report. The texts thus prepared are then debated by the Assembly. As a rule there are two successive deliberations or readings. If urgency is declared, the second reading is suppressed. The simplest kind of vote is given by raising hands. If there is any doubt, the President takes the vote again, the members sitting or standing. A certain number of members may demand a public ballot. In this case ushers with silver chains pass the urns along the aisles. The representatives present drop in white or blue papers which bear their names and those of their colleagues; the whites signify yes, the blues no. If it is

desired to make sure that those present are not voting for the absent, the public ballot at the tribune may be demanded, with or without a nominal appeal or calling of the roll.

When a law is voted by the Chamber of Deputies it is sent up to the Senate, and *vice versa;* if necessary, it recommences and repeats its travels until an understanding is reached. This coming and going often retards the work of Parliament, but it involves further reflection.

Financial Laws.

By an exception all financial laws must be in the first place presented to the Chamber of Deputies and voted by that Chamber. This Chamber is elected directly by universal suffrage, and is therefore the first to be called to pronounce upon all legislative measures which may involve increased expenses or heavier taxes.

Thus when the Government yearly introduces its Budget, which provides the various Ministers' credit for the coming year, determines revenue, and authorizes the collection of taxes, it places the Budget upon the table of the Chamber, and the same procedure is followed if during the year there is need of supplementary credit, or if a new loan is proposed, or if it is desired to create fresh employments. The limitation of the

rights of the Senate in financial matters is a very old source of dispute between the two Chambers. When it has received a financial law voted by the Chamber, can the Senate increase the credits or augment the taxes, or has it only the power to reduce the one or the other? Although the Chamber and the Senate deal with the matter from opposite sides, the conflict invariably ends in negotiations of a simple nature.

Parliamentary Control

You have heard how Ministers can be questioned or interpellated. Questions which give rise to no debate are perhaps not sufficiently usual in France. They are much more frequent in England, where they enable the Government to furnish, without ceremony, precise information as to its daily performances. Interpellations which are necessary, as they alone involve the sanction of an "order of the day," might well be less frequent. They result in discussions with the full orchestra, so to speak, and often hinder legislation. The Chambers need the weapon, but they should not abuse it. I might say as much of parliamentary inquiries. Any deliberative authority has a right to obtain information, and sometimes the only means of doing

so is to hold an inquiry. In order to control the actions of Ministers, to verify electoral results, or even to shape legislation, the Chambers may be induced to order an inquiry or commission. But it would not be tolerable were the commissaries appointed to this end by the Legislature to attempt to exceed the limits of the authority which appoints them and arrogate to themselves, for example, a judicial function. Politics and the party spirit do not always agree with the serenity of justice.

Special Functions of the Senate: The Right of Dissolution.

You may recall that the President of the Republic has the right to dissolve the Chamber if it seems to him that it is vegetating in impotence or seething in disorder. But if he could take so serious a measure alone the Constitution would indeed have provided him with a formidable weapon, and he might at times be tempted to make it an instrument of tyranny. The dissolution of the Chamber of Deputies is therefore conditional upon the previous consent of the Senate. Neither the President nor the Senate, in employing this prerogative, is committing an action which affects the national sovereignty. They are simply making an appeal

to the country, which is the supreme master and which says the last word.

The Supreme Court of Justice.

We have already seen that if the Chamber of Deputies arraigns the President of the Republic for high treason, or the Ministers for crimes committed in the exercise of their functions, the Senate is called upon to sit as a court of justice. In the majority of modern constitutions there exist courts of high jurisdiction before which political offenders can at need be summoned. Sometimes it is the highest tribunal of common law which deals with these exceptional trials; sometimes the constitution provides a special organization. In the United States, as in France, political offences are tried by a political assembly. This usage, it is true, is not in conformity with the theory of the separation of powers, and risks the introduction of party feeling in a judicial action. But on the other hand there is an advantage in not submitting to the ordinary courts questions which are outside their normal competence and also in not confounding in an equal discredit political offenders with offenders in common law.

The French Senate judges not only the President of the Republic and the Ministers arraigned

by the Chamber. It may also be constituted as a court of justice to try attempts made upon the security of the State by any persons whatsoever. In this case the Chamber has no need to pass a vote of impeachment; the President of the Republic, with the countersign of the Ministers, convokes the High Court by decree. Since 1875 the High Court has twice been summoned: in 1889 and in 1899. Every year the Senate elects from among its members a commission which, were a trial in question, would be entrusted with the inquiry. For the sake of public tranquillity we may hope this commission will never again have occasion to sit.

JUSTICE

X

JUSTICE

JUSTICE IN THE STATE

THE word justice has two senses, which, for that matter, are related. It signifies the idea or sentiment of *right* or law; it also denotes the institution which is destined to secure the respect of the law in a society. You have seen statues or pictures which represent Justice as symbolically personified; as a woman of robust build, with solemn countenance; in one hand she holds a balance, in the other a sword: the balance to weigh that which, in a conflict of interests, is due to each of the opponents; the sword to show that at need the might of the public will constrain the citizen to observe the decisions of Justice.

The establishment of a good judicial system is a vital necessity to every organized society. How could we leave men to settle their private quarrels among themselves by violence or feuds?

How could we leave the care of pursuing and chastising the guilty to the victims of a crime or their relatives? The State must early have understood that it not only had the power, but that it was its duty to institute a social code of justice, to protect individual rights, and to defend the collectivity itself against criminals.

Ancient France: Diversity of Laws.

In ancient France the law was very variable and the system of jurisdiction which applied them was no less so. Under the Frankish monarchy there were, it is true, certain laws which were imposed upon all the subjects of the King: they were those contained in the capitularies of the kings; but in general the laws were different according to the race of those subject to them. Later, in the provinces, local customs sprang up which almost everywhere obliterated the ancient codes. Roman law, whose might and grandeur had at first remained intact, was no longer applied as a written law, and where it did survive it did so because it had profoundly influenced public manners. But at the end of the eleventh century a magnificent resurrection took place, especially in the southern provinces, and the old laws of the Empire resumed their force. They supplanted custom in a great part of France,

and were installed as written law; elsewhere they were mingled with the customary law; farther to the north they did not succeed in dislodging it. France was thus divided into a country of written law and a country of customs.

Presently a new source of legislation appeared; it emanated from the royal power. The ordinances issued by the King were laws whose importance, as century followed century, was only to increase. Before becoming executory they had, it is true, to be registered by the great judicial bodies which were known as parliaments. (These courts of justice of the *ancien régime* must not, of course, be confounded with the representative assemblies of to-day.) But if the parliaments resisted, the King himself caused the ordinance to be registered in a "bed of justice," and the law was thereby promulgated. At the same time there was a development of canonical or ecclesiastical law, which was mingled with customs, penetrated the written law, influenced the ordinances themselves, and formed a fresh cause of variety in this vast chaos. "When a man travels in France," said Voltaire at a time when neither railways nor automobiles were known, "he changes laws almost as often as he changes horses."

Diversity of Jurisdictions.

Under the feudal system justice was dismembered, like the other attributes of sovereignty. It was said of a *seigneur* that he had the right of the high or the low justice, accordingly as he could judge the most important causes or only the less serious. When a vassal was being tried he had the right to demand the formation of a tribunal composed of his peers. The seigneur, or his representative, who was known as a provost or bailiff, confined himself to presiding at the trial and proclaiming the sentence. When the trial concerned a plebeian the same guarantees were not thought necessary. The seigneur or his substitute tried the matter alone, always after consulting or professing to consult a group of notables. Once rendered the sentence was, as a rule, final. There was no appeal to a superior seigneur save in cases where the judge had refused to examine the plea: that is, in the case of a denial of justice. The nobles, it is true, had another resource. If they claimed that their seigneur had through partiality issued an erroneous judgment, they could provoke him to a duel before his suzerain. The duel, indeed, at this time had all the force of a judicial procedure.

The jurisdiction of the King, organized at first

within the restricted domain to which his sovereignty was confined, was extended in proportion as he succeeded in destroying or diminishing the territorial privileges of the nobles. The representative of the King also was known as the provost. The provosts were first of all inspected by the Grand Seneschal. Later on their permanent superiors were functionaries known as seneschals in the provinces of the west and south and elsewhere as bailiffs.

To these numerous jurisdictions we must add those which were established by the communes and the ecclesiastical authorities. But more important tribunals soon appeared above this legion of petty courts.

Originally the King himself tried certain important affairs, presiding over a council of prelates, vassals, and officers of the crown. This high tribunal was the *curia* or court of the King. Eventually the bailiffs, created to supervise the provosts, extended their jurisdiction over the seigneurial courts. They became judges of appeal in respect of two sorts of jurisdiction which were subordinated to them, and the King's court became a court of appeal for the causes tried by the bailiffs. Constituted thus as a supreme court, it assumed a great and increasing importance. Instead of being composed of the

great personages of the kingdom it thenceforth comprised professional jurisconsults; instead of holding brief and intermittent assizes it became a permanent institution. Under St. Louis it received the title of parliament.

The parliament, first of all presided over by the King, soon became an independent jurisdiction. It was divided into several chambers: the Chamber of Inquiries, the Chamber of Requests, the Great Chamber, and the Chamber of the Tournelle or Criminal Chamber.

At the outset there was only one parliament: that of Paris. But little by little provincial parliaments were constituted, and these, too, were destined to become courts of appeal. Parliaments were created at Toulouse, Grenoble, Bordeaux, Dijon, Rouen, Aix, Pau, Metz, Douai, Nancy, and in Brittany and Franche-Comté.

The King used frequently to intervene in the administration of justice. The judges whom he appointed were merely his delegates, and in virtue of the right of "reserved justice" he retained the power of removing the cause from their competence on serious occasions. He then brought the affair before his council, or had it tried by special commissaries.

Justice

Venality and Heredity.

In the royal courts positions were at first temporary, or at least for a time. Presently they became assignable for a sum of money, despite the vehement and reiterated protests of the States-General of the fourteenth and sixteenth centuries, which honourably did their utmost to combat the progress of this venality. Sometimes judicial offices were sold by the holders to their successors; sometimes, if death rendered them vacant, it was the King himself who profited thereby. Then, by exceptional measures of favour which gradually became more and more general, the King granted the councillors of the parliaments, bailiffs, and provosts, the "survival" of their charges to the profit of their heirs, and heredity was added to venality.

Offices were generally bought at a very high price, the judges naturally endeavouring to augment their profits, and they not unnaturally formed the habit of recouping themselves and remunerating themselves for their labours by taking money from the parties pleading. At an early period the custom had been introduced of offering the judges modest presents, mere civil offerings, of spiced sweetmeats, or spices, as they were called. The spices became obligatory and

the quantities increased enormously. Then, as old Pasquier writes, they were turned into money, "the judges liking better to touch money than sweetmeats." Justice, ruinous to those who bought it, became a privilege for the judges. Great thinkers like Rabelais, Montaigne, and La Bruyère denounced the most crying abuses. Certain monarchs endeavoured to reform them. However, the evil lasted until the Revolution. The *cahiers* of the States-General of 1789 all demanded the reconstitution of the judicial power.

The Revolution: Modern Principles.

The Constituent Assembly suppressed the venality and heredity of offices in the judicature. At the same time it laid down principles on which the organization of justice is based to this day.

The delegates who exercise the judicial power in the name of the nation must not be confounded with the delegates to whom the nation confides the legislative or the executive power. In the interest of the public liberties, then, these attributes of sovereignty must be bestowed on distinct representatives. The better to ensure this reciprocal independence, the Revolution preferred the judges to be elected directly by the people. A logical conception, but full of inconveniences. Elections, especially elections held

according to the system of majorities, are always influenced by local feeling. Elected judges run the risk, in the administration of justice, of being at the mercy of their electors. They may be led to favour their friends or seek to avenge themselves upon their enemies. It was not long, therefore, before combinations were sought which, while giving the judges guarantees of independence, removed their appointment from the arena of electoral quarrels. It was permitted that the executive power should nominate them, but once nominated they were to be *inamovible;* that is, they could not be displaced against their will by the Government. Thus saved from any dangers of forcible dismissal, having no reason to fear disgrace nor arbitrary action, they have a greater liberty of judging according to their consciences the causes which are submitted to them. Another principle. Just as the legislative power deliberates under the eyes of the people, so the judicial debates should be public. Although under exceptional circumstances the president of the tribunal has the right to call for closed doors, even so the sentence must be pronounced in open court.

Access to justice is free. Any one may believe that he has a right to enforce: he may introduce his action. If it is in bad faith, the judge, after

having heard the two parties, will condemn one to costs and damages on the demand of the defendant unjustly cited; but the action will none the less have been formed and sustained. On the other hand, the defence also is free. Whosoever is prosecuted, whether in the civil court or the criminal court, must have every facility for justifying himself.

In order that justice shall be truly accessible to all, it ought to be wholly gratuitous. The Revolution suppressed the giving of "spices." A magistrate who should to-day receive a present, no matter how insignificant, from a litigant would expose himself to severe penalties. But the State, which has always need of resources, has maintained the expenses of justice, which are sometimes very heavy. We shall see that it has at least furnished the poor with the means of obtaining assistance in the courts.

The judge, confronted with a cause, is obliged to pronounce upon it. He has no right to reply to a pleader, "I cannot try your cause. I do not know whether you are in the right or in the wrong. The law which you are invoking is obscure." The judge cannot, like Pontius Pilate, wash his hands of the matter. He must come to a decision, and he must make it known. If, under one pretext or another, he were to refuse

to act, he would be prosecuted as guilty of a denial of justice. The law does not intend that a timorous conscience or a feeble character shall hinder the accomplishment of the judicial duty. Neither has the judge the right to reply laconically by "Yes" or "No." This, as we shall see, is a prerogative that belongs to a criminal jury. As a general rule the judge must give the reasons for his sentence. The law is based not upon authority but upon reason.

THE "CHOSE JUGÉE."

The judge cannot base his pronouncement upon the causes which are submitted to him upon general or customary grounds (Article 5 of the Civil Code); in other words, the judge does not make the law. His decision does not apply, as a general rule, to all those persons who, without having figured in the trial in question, are, or appear to be, in a case identical with that of the actual pleaders. Each judgment takes effect only between the parties in the case. Otherwise the judge would no longer be a judge; he would be a legislator.

The majority of decisions do not become definitive as soon as given. All affairs of a certain importance are submitted, if those interested so desire, to two degrees of jurisdic-

tion. The right of appeal is open to the party who has lost his case. Justice, however well organized, is fallible. The possibility of a double inquiry diminishes the chances of error. When, after a judgment rendered in the first resort—that is, susceptible of appeal—the legal term of delay has expired without the parties having resorted to this recourse, or when a sentence has been pronounced upon appeal in the last resort, the decision becomes executory and constitutes the *chose jugée*.

The *chose jugée* is thenceforth presumed true in respect of the parties to the case. If the action was a civil one, the respective rights of the pleaders will remain irrevocably fixed between them. Even though later the same persons should decide to commence an action having the same cause and object, the preceding decision would be an insuperable obstacle to their pretensions. It cannot be permitted that the judicial truth should be indefinitely discussed; otherwise property, contracts, and all civil rights would be in a condition of perpetual instability. If the action were a criminal one the *chose jugée* is equally presumed true for or against the accused, accordingly as he was acquitted or condemned. And here, the accused having been prosecuted by the public ministry in the name

of the society, the *chose jugée* imposes itself, as a presumption of truth, on society as a whole. If every citizen were free to reverse an acquittal or a condemnation by the light of his own reason, he would only too often undertake this perilous revision in the heat of passion. Individual judgment cannot be substituted in the nation for the judgment pronounced in the name of the nation by competent tribunals.

It may happen, however, in the case of a civil trial, that evidence at first suppressed may be later discovered. It may happen, in a criminal trial, that false witnesses have deceived the judges, or that proofs of innocence are revealed after condemnation. In either case the law offers an extraordinary means of redress. In the first place, the civil petition; in the second place, revision. This procedure conciliates as far as possible the social principle of respect for the *chose jugée* and the moral principle of respect for the truth.

JURISPRUDENCE.

Although the judges do not make what we may call a decree or enactment of law except in special cases, they are forced to apply in each particular case the general laws of the country. If these laws are obscure or insufficient, they are

obliged, since they must none the less deliver judgment, to interpret them. The interpretation which they give has no statutory value—that is to say, it is not necessarily accepted in later and analogous cases in which other parties might engage. But as it is the result of study and reflection, it has, none the less, a certain juridical authority; so that it comes quite naturally to a pleader, when he is discussing a point of law before the court, to invoke an interpretation already given, although by other judges, of the point at issue.

Moreover, there is something displeasing in the idea that the law should be interpreted too diversely in cases bearing upon the same objects. The prestige of justice itself demands that judicial decisions shall, as far as possible, be harmonious and consistent. There has therefore been established, above all the tribunals of France, a supreme controlling court, charged with the cassation of all decisions which would be contrary to the laws or which would interpret them inexactly.

This court has gradually introduced, in the body of judicial decisions, certain concordant views. Unity is not at once established upon each litigious question, but it tends toward a rapid evolution, and when the Supreme Court

has pronounced upon any given point or cause, its opinion rapidly prevails in all the trials in which the same juridical problem occurs. Thus, side by side with the written law, a jurisprudence is created which fills lacunæ and dissipates obscurities.

The Court of Cassation.

The controlling court of which I have been speaking is the Court of Cassation. It was created in 1790 by the Constituent Assembly.

It sits to-day in a newly restored portion of the old Palais de Justice of Paris, on the left bank of the right-hand branch of the Seine. It is divided into three chambers: the Chamber of Requests, the Civil Chamber, and the Criminal Chamber. It is presided over by a president, and each chamber has its president. The magistrates who compose this court are called councillors.

Society is represented in the Court of Cassation by a Procurator-General, assisted by advocates-general.

The Court of Cassation does not constitute a superior degree of appeal. Causes are not submitted to it as a whole; it examines only what is called the point of fact—that is, the circumstances of the cause; the aspect of the case

laid before it presents only the point of law—that is, the double question as to whether the procedure was regular and whether the law was respected by the judges.

The regularity of procedure is by no means an indifferent matter to the litigant. Racine and Beaumarchais have wittily ridiculed, in the theatre, the ancient forms of justice. They had reason to complain that these forms are either too superannuated or too meticulous. It would be absurd to condemn litigants to the observation of annoying formalities. But the legislator must none the less fix in a general manner the rules according to which public and private actions may be commenced, the proofs administered, and the judgments delivered. It is these rules and, to tell the truth, these forms of justice which guarantee the citizen against the arbitrariness of judges. It is therefore essential that the Court of Cassation should be able to undo a decision not only when the law has been ill-interpreted, but when the proper forms have not been observed.

It is from this double point of view that the Criminal Chamber examines, when they are brought before it, the decisions delivered in a penal case. This double point of view is also that of the Chamber of Requests when a civil suit

is at issue. It does not control the appreciations of fact which the decision of the judge contains; it asks only whether, in form or in substance, the law has been violated. If it considers that it may have been, it admits the petition, which is then submitted to the examination of the Civil Chamber. This chamber studies the petition in turn, and finally admits or rejects it. If it admits it, it quashes the decision against which the petition is drawn up, but does not itself replace it by a new decision. It does not sit as an acting judge; it merely "states the law" and refers the case back to a tribunal of the same degree as that which rendered the decision quashed. If the new judges persist in the interpretation given by the first, and if again a petition is presented, the Court of Cassation determines the disputed point of law with exceptional solemnity, all three chambers being united.

Besides this function of jurisprudential control, the Court of Cassation fulfils, in cases of revision, functions of a different kind. It considers not merely errors of law: it enters into an examination of the facts, holds an inquiry, hears witnesses, and revises, in the cases provided by the law, the sentences which on the strength of lying depositions may have been pronounced upon innocent persons.

Finally, the Court of Cassation, with all three chambers united, forms the Superior Council of the magistrature. In this capacity it exercises a disciplinary control, and may inflict a censure, a provisional suspension, or even the discharge of those who are convicted of professional misbehaviour.

THE ORGANIZATION OF THE JUDICATURE

The Justice of the Peace.

In every canton there is a magistrate, whose duty is less to try lawsuits than to endeavour to prevent them. He bears the title of *juge de paix:* or, to use the English term, justice of the peace. The Constituent Assembly created his conciliatory functions in 1790, and sought to bring him as close to the people as was possible. He lives in their midst, is accessible to all, and exerts, in the name of the State, a sort of familiar magistracy.

In a great number of cases the law seeks to prevent lawsuits by submitting them to a preliminary formality, known as the *preliminary of conciliation.* The parties appear before the *juge de paix,* who endeavours to persuade them to accept a friendly settlement. This attempt is so often successful that many judicial instances

go no farther than the study of the *juge de paix*. The more he is loved and respected by the people, the better his chances of succeeding in this delicate mission. The cantonal magistracy should therefore be recruited with particular care.

But the *juge de paix* is not merely a conciliator. The law has endowed him with judicial functions. His competence has been enlarged since 1905; according to the importance of the suit, he judges "in the last resort" or "subject to appeal."

Suppose that a traveller has been lodging in an inn or hotel; he has left property there and cannot find it. He says its value was £10 or £12, and claims that sum. The *juge de paix* will try the matter "in the last resort." His "sentence," once pronounced, will be final. If the traveller claims £40, the judge will still be competent, but his "sentence" may be appealed against, and the appeal will go before a court, which we shall presently speak of, the court of *first instance*. The *juge de paix* will pronounce, with this distinction, upon a multitude of causes which are submitted to him by law: disputes between passengers and carriers, landlords and farmers, employers and workmen, etc.

The *juge de paix* has also a penal competence. He can sentence those who have committed con-

traventions by violating the police regulations to a fine, or, in case of a second offence, to prison; for example, the chauffeur who drives a motor-car beyond the authorized speed limit, or who lets his engine smoke in the streets of Paris.

It is the *juge de paix*, again, who, when a child is left orphaned, or when any one becomes insane, or is ruining himself by his prodigality, convokes and presides over the *family council*, which assembles to choose a guardian, a counsel, or an administrator.

Courts of the First Instance.

In each arrondissement, usually in the market-town, sometimes in some other town, a tribunal sits which is known as a court of first instance, to distinguish it from the second ordinary degree of jurisdiction—that is, the Court of Appeal. In reality, however, the court of first instance is itself a court of second instance, an appeal court, in respect of the *juges de paix*.

The court consists of at least three judges: a president and two assessors. But this minimum is usually exceeded. There are small tribunals which try very few cases and might without much inconvenience be suppressed. Railways readily enable the public to submit

their differences to the court of a neighbouring arrondissement. On the other hand, there are, in arrondissements which are thickly populated, notably in industrial districts, courts which are much occupied and consist of several chambers. The tribunal of the Seine has eleven chambers, themselves subdivided into sections and supplementary chambers. There is a president, vice-presidents, and presidents of sections.

The members of the court sit in black robes; on their heads they wear *toques* or bonnets embroidered with silver.

They try civil causes—that is, those whose objects are affiliation, marriage, separation, divorce, property, usufruct, contracts, sales, locations, donations, successions, partitions, hypothecations, etc. According to the importance of the pecuniary interest at stake these causes are referred on appeal from the decisions of *juges de paix* or directly assigned; among these latter they try in the last resort those in which the claim does not exceed a certain figure, while others are tried subject to appeal.

The decisions of these courts are called judgments.

Courts of the first instance have also, as correctional courts, to try those offences against the law known as misdemeanours (*délits*). A

misdemeanour is an infraction of the law less serious than a crime and punishable by lesser penalties. An assassination—that is, a homicide with premeditation—is a crime, and may entail the penalty of death; a murder—that is, a homicide without premeditation—is a crime punished by hard labour. Assassins and murderers do not appear before the correctional courts. A theft, a fraud, an abuse of trust is a misdemeanour punishable by imprisonment. Thieves and swindlers are tried by these courts.

A Civil Hearing.

We can readily be spectators, if we wish, first at a civil hearing and then at a correctional hearing.

The moment the President of the Court and the judges enter the hall a man dressed, like them, in a black robe, cries, "Gentlemen, the Court!" ("*Le tribunal, messieurs!*"). Every one rises in silence. The magistrates take their seats behind their desk. To the left, before another table, is another black robe; to the right, at another table, yet another.

What are all these robes? They are those of the usher, the public ministry, and the recorder or clerk of the court.

The usher announces the court. At need the

president instructs him to keep order. When not present in audience he drafts and notifies, at the request of private persons, summonses, declarations, and other documents of the kind. He calls upon debtors at the instance of creditors. Humorous writers have made a sort of bogey of him. But he is, as you may see, a very peaceable sort of person.

The public ministry is represented here by the procurator or public prosecutor or his substitute. It is his mission to defend the interests of society before the court. The law orders him to intervene in certain matters, notably those affecting minors, communes, or public establishments. In all other cases he may, if he wishes, deliver a "conclusion" after the pleadings and propose to the court the solution which he considers just. The procurator or his substitute stands when speaking. Hence the term "standing magistracy," as opposed to the "seated magistracy." The judges form part of the seated magistracy; the procurator belongs to the standing magistracy. It is also said of the procurator that he is the *chef du parquet*, an expression referring to the enclosure formerly reserved to this magistrate and his subordinates.

The members of the *parquet* are magistrates, but not judges. They are not *inamovible*, as

are the members of the seated magistracy; they may be replaced or dismissed.

As for the recorder or clerk (*greffier*), he takes notes of the sequence of cases, keeps the minutes—that is, the original texts of the judgments—and delivers copies, which are called *expéditions*.

Now the usher is calling over the list of causes. The president decides which ought to be heard to-day; he adjourns for a week or a fortnight those which are not ready to be tried or which are not convenient.

The roll having been called, the president gives the word, in the first case, to the advocate or the *avoué*, or attorney, of the plaintiff. These two gentlemen also wear the black robe. The first has on his left shoulder an ornament or shoulder-knot which the other has not. One or the other reads a few lines which sum up the motives and object of the plaint. These are the *conclusions*. They form part of the procedure—that is, of the mass of written documents which the law demands in the course of a trial, and which are drawn up by the solicitor. In a civil case the assistance of the solicitor is obligatory. The attorney holds the mandate of the pleader, and officially represents him.

Like the recorder and the usher, the attorney,

or *avoué*, is what is known as a ministerial officer. He is so called because he fills an office or ministry in the department of justice. Since 1816, moreover, he holds a position or practice which he can cede to a successor, with the authorization of the Government. But this office, of course, is not hereditary, as the judicial offices were under the *ancien régime*, and the successor must fulfil all the conditions of status and professional competence.

It is not, as a rule, the *avoué* who pleads. He is authorized to plead only where there is no bar. The bar is formed by the corporation or order of advocates. When a licentiate in law has taken the oath loyally to exercise his profession he may demand admission to a bar as *stagiaire*, or probationer, and then as registered or inscribed advocate. He thereby becomes subject to certain rules of etiquette and confraternity. The order to which he belongs has a council of discipline, elected by the members of the bar, and a head, also elected, known as the *bâtonnier*, because formerly, in Paris, at the *fêtes* of St. Nicolas, he carried the *bâton* or banner of the saint.

In civil causes, then, there is a written *preparation*, which is the work of the *avoué*, and public debates, in which the advocates defend the contradictory claims of the pleaders.

THE CORRECTIONAL POLICE COURT.

Now come to a correctional hearing. The accused parties, the *prévenus*, the "forewarned," appear in a state of liberty or as prisoners, as the case may be. If they are prisoners, they are accompanied by a representative of public authority, a gendarme or Republican Guard. The president interrogates them. They endeavour, in their replies, to justify or deny the actions of which they are accused. Then the witnesses cited by the *parquet* and those cited by the defence are called to the bar. All these, as soon as the debates commenced, were invited to retire to a neighbouring chamber. They return one at a time as their names are called. "Say what you know," says the president. Some know nothing; others don't know much, or are intimidated and dare not say what they do know. There are mutes; there are gabblers, whom the president has to bring back to the point. But from their evidence, often obscure, often contradictory, the court must endeavour to disengage the truth.

Now the substitute takes his turn. He does not merely present "conclusions" now; he pronounces an arraignment, a requisition. He requires that the law be applied to the accused.

If, nevertheless, he considers that the accused merits a certain indulgence, he proposes that the court shall moderate the penalty by admitting extenuating circumstances. The advocate rises in turn to defend his client. The court retires to deliberate, or if the matter is simple deliberates *in situ*, talking in low tones. Then judgment is rendered. Are the charges insufficient? The "forewarned," the accused, is acquitted. Is he recognized to be guilty? He is sentenced.

But if this condemnation is the first he has incurred the court may accord him a respite in the execution of the penalty, and if he has not exposed himself to a fresh condemnation before the expiration of five years the penalty will never be inflicted. This is a measure of indulgence, of humanity, which is intended to give those who have been momentarily led astray a chance of amendment.

Legal Aid.

The judges no longer receive "spices"; they are paid by the State; but the expenses of justice, which include the cost of stamps and registration, imposed for the benefit of the Budget, are still sufficiently heavy. A poor man who has rights to enforce against a rich man

would often be greatly embarrassed if he had to disburse the necessary sums to bring an action or to defend one. Since 1851 poor people have a resource in what is known as judicial assistance or legal aid. A bureau is at hand which will inquire into their position and will grant or refuse assistance. In certain cases the law renders such aid compulsory.

A workman the victim of an accident incidental to his calling has an undisputed right to assistance when he claims reparation. The attorney and advocate assigned to represent him must give their services for nothing. If a man who is accused should lose his case, he must, it is true, eventually pay the Treasury that portion of the expenses which represents fiscal rights, which he was excused from paying in advance. If he gains his case, his adversary has to pay all expenses; he himself does not disburse a penny.

The Courts of Appeal.

When a judgment has been rendered in the first resort the party who has profited thereby signifies the fact to the losing party, and within a delay of two months the latter may lodge an appeal. In territorial France there are twenty-five Courts of Appeal, several of which sit in

the old parliament towns and have several departments in their jurisdiction. Corsica has one at Bastia, Algeria and Tunis have one in Algiers.

A court of appeal sits with a minimum of five members: a president and four councillors. On solemn occasions the members of the court wear red robes; at ordinary hearings they content themselves with black. The decisions which they render are called awards or decrees (*arrêts*).

The number of chambers varies with the court. In Paris there are at present ten chambers, with one first president, ten presidents, and more than seventy councillors.

In each court, beside one or more civil chambers, there is a chamber of correctionary appeal, which is, as its name indicates, entrusted with the judgment, on appeal of the condemned or the public ministry, of those accused who have already appeared before the court.

In each court also sits a chamber of indictments (*mises en accusation*). When an examining magistrate or *juge d'instruction*, having proceeded to a correctional inquiry, has rendered an ordinance of *non-lieu*, or, in other words, has decided that there is no cause for prosecution, the public ministry or the victim of the delinquency can oppose this ordinance, and the chamber of indictments is required to pro-

nounce on the matter. It is the same chamber which, in criminal inquiries, indicts the presumed criminal and sends him to the court of assizes.

The public ministry is represented in the courts of appeal by a procurator-general, advocates-general, and substitute or assistant procurators. Their functions correspond with those of the magistrates of the *parquet* in the courts of first instance.

We shall also find here the auxiliaries we have already encountered: recorders, ushers, attorneys, and advocates.

The Court of Assizes.

If you now feel equal to assist at a lugubrious spectacle, let us go to the Assize Court, where hooligans, assassins, incendiaries, and violent robbers are tried; you will hear sentence pronounced upon them of death, hard labour, or imprisonment.

Who is to declare them guilty? The three magistrates who sit yonder facing the public? No: but the twelve citizens in ordinary clothes who are seated facing the accused. They are the jurors, and together they form the jury.

The three magistrates are three councillors if we are in a town which boasts of a court of appeal. Otherwise the presiding magistrate is

a councillor, delegated by a neighbouring court, and the two assessors are judges borrowed from the local court. All these deliberate upon the application of the penalty when the jury has given its verdict of "guilty."

This is how the juryman is appointed. Every year, in the chief town of the canton, the justice of the peace, the assistant justices, and the mayors of all the communes assemble. They draw up a first register, in duplicate numbers, consisting of electors thirty years of age, able to read and write, and known as respectable men. They cannot, however, select deputies, nor judges, nor teachers; nor may they choose septuagenarians, nor men who cannot live without their daily labour, nor citizens who have sat upon a jury during the preceding year. This preparatory list is then submitted, in each arrondissement, to a second commission, composed of the president of the court, justices of the peace, and councillors-general. This commission establishes a final list, which, together with those of the other arrondissements, forms the annual departmental list, containing several hundreds of names, or in the department of Seine many thousands.

When the Court of Assizes is called upon to sit, thirty-six names are drawn by lot from the

departmental list. In the provinces the Assize Courts have four sessions a year; this drawing therefore takes place four times. In Paris, where the population is great and crime, unfortunately, frequent, the sessions are held every fortnight and succeed one another without interruption.

In every criminal case there is a fresh drawing of the thirty-six names for the session. Twelve names are drawn. At the time of this second drawing the public ministry and the defence have the right to challenge—that is, to set aside—as many as twenty-four in all of those persons whose independence or impartiality they rightly or wrongly suspect.

The twelve jurors finally chosen have then to fulfil judicial functions which, although temporary, are none the less of great importance. They have to decide as to the honour, liberty, and life of their fellows. If they were to abandon their post before their functions were completed, they would commit a serious offence and would be punished by a fine. If they allowed themselves to be corrupted by the accused or his victim, they would be guilty of a crime punishable by imprisonment.

When their names are called they all take the oath "to betray neither the interests of the

accused nor those of the society which accuses him; not to communicate with any one until after their verdict is declared; to give ear neither to hatred, nor malice, nor fear, nor affection; to decide according to the charges and the means of defence, following their conscience and their intimate conviction, with the impartiality and firmness which become a free and upright man." By the very formula of this oath you may see that theirs is a lofty task, and that they accomplish a great social duty.

When the witnesses have been heard, and the advocate-general has pronounced his indictment, and the advocate of the accused has completed his pleading, the jurors retire to the " chamber of deliberations," and there, by secret ballot, vote upon the questions which are put to them, and to which they must reply simply by " yes " or " no," without giving motives. " Is the accused guilty of such a crime? " " Yes, by a majority." The jury also pronounces upon the admission of extenuating circumstances which may diminish the penalty.

The verdict of the jury once rendered, the three magistrates who compose the court deliberate in turn. They apply the penalty which corresponds to the decision of the jurors, while they are free to choose between the maximum and minimum imposed by the law.

There is no appeal against their decision, but if a legal formality has been omitted, either by the jurors or by the court, the condemned person has the right to petition for cassation, and if his application is granted, the affair is sent before another court of assizes, which tries it anew without taking any note of the account of the previous debates.

The court of assizes is cognizant not merely of crimes; it is also competent in certain Press trials. When a Minister, a representative of the people, or an official has been defamed or insulted by a journal, he may prosecute the director of the journal and the author of the offending articles. But the latter have the right, in their defence, to establish the truth of the facts alleged. The debates then take place before the assizes, and the jurors deliver the verdict.

The institution of the jury has the advantage of submitting affairs to the judgment of upright men who are not professional magistrates, and who bring only their common sense and impartiality to court. They are not dependent upon authority; yesterday they were tradesmen, gentlemen, manufacturers; to-morrow they will re-enter civil life. No judicial decision can offer better guarantees of independence than that thus rendered.

OTHER FORMS OF JURISDICTION

The Jury of Expropriation.

You may recall that the Declaration of Rights proclaimed individual property to be sacred and inviolable. None the less, the right of property, like all human rights, is limited by respect of the rights of others. If, while exploiting his estate, a proprietor had the power to prevent his fellows from profiting by theirs, the right of all would be annihilated by the right of one single person. The law has therefore provided for cases in which the social interest may demand that a citizen shall be deprived of his property; but it has taken care that expropriation shall be accompanied by special guarantees, and that the proprietor shall previously receive a just and sufficient recompense.

We will suppose that you have a field which it is your custom to sow with corn; a house too, and a vineyard; and now a canal, a highway, or a railway is about to pass by your property. The route encroaches on your field, your vineyard, or the house itself. Has the President of the Republic, abetted by a Minister, the power to send a gendarme to drive you out? By no means. You are at home, and you cannot be

expropriated except as a sequel to a whole series of protective formalities.

In the first place, the work projected must be solemnly proclaimed to be of public utility. This declaration is pronounced by a bill when it is a question of undertaking enterprises of great importance: national highways, canals, railways, docks. It is pronounced by a decree of the public administration when, in the case of a railway, it is desired to build a branch line of less than twenty kilometres (about 12½ miles), or to rectify an existing route. It is pronounced by a resolution of the Council-General when it is a question of opening or enlarging a local highway. In all cases the bill, decree, or resolution is preceded by an administrative inquiry. The localities or territories upon which the works are to be executed are carefully designated either in a declaration of public utility or in a later pronouncement. Then, in order to determine the private properties which may have to be ceded, a prefect issues an order of cessibility. The proprietors affected may treat by private contract with the administration, and cede by agreement the parcels threatened with expropriation. If they do not find the price which is offered sufficient, the civil tribunal is notified by the procurator of the Republic. It makes

sure that all the legal formalities have been properly fulfilled, and if all has been done in order it delivers its sentence of expropriation.

This intervention of the judicial authority is prescribed by the law in the interests of private individuals, so that they should not be subjected to the arbitrary action of the administration.

Directly the expropriation is pronounced, the expropriating party—the State, department, or commune—becomes in law the proprietor of the house, vineyard, or field. But you are not thereby immediately expelled; you may continue in occupation until you have been indemnified. It is not the court which fixes the indemnity, but a special jury which sits afterwards.

This jury is constituted in each department by the Court of Appeal, or by the court of the chief town, from a list drawn up in advance by the Council-General. Any Frenchman may one day be one of the members of this jury of sixteen persons. He will then swear to fulfil his duties in a conscientious and upright manner; he will visit the expropriated property under the direction of a magistrate, assisted by his clerk, and in the presence of the interested persons; he will enjoy the most extensive rights of inquiry; he will hear the claims of the proprietors and the offers of the administration defended. Finally,

he will deliberate with his colleagues and will determine the indemnity due to the dispossessed proprietor, farmer, tenant, or other beneficiary. He must take care that this amount represents the totality of the prejudice suffered; but neither must he forget that it will be paid with the money of taxpayers. He must not imitate the unfitting generosity of certain juries of expropriation, which, by complaisance or indifference, have granted private persons indemnities on a scandalous scale at the expense of the general interest.

Councils of "Prud'hommes."

Prud'homme is an old French word signifying a wise man, a prudent man. The municipal officials were formerly called *prud'hommes*, as well as judges, experts, and all who had, or ought to have had, experience in affairs. The Council of Prud'hommes is to-day a particular jurisdiction charged with terminating by way of conciliation, and at need by judgment, such differences as may arise between merchants or manufacturers and their employés, workmen, or apprentices.

In 1805 the Emperor Napoleon, finding himself at Lyons, received a delegation of silk manufacturers and the foremen of their mills. You

probably know that the silk industry has for a long time been the principal source of wealth in the Lyons district. Both workers and masters complained that since the passing of a law of the year XI their disputes were submitted to the functionaries of the police; and they asked for a tribunal composed of their own representatives. The Emperor granted their request, and a law of the 18th of March, 1806, established at Lyons a Council of Prud'hommes composed of nine members, five of whom were merchant manufacturers and four foremen of mills. Napoleon was careful to ensure a preponderance on the part of the employers. Later decrees extended this institution to other industrial or commercial cities. Then, the functions of these councils being gradually enlarged, they increased in number and in independence. The legislation controlling them is now codified in a long law of the 27th and 28th of March, 1907.

The creation of a Council of Prud'hommes is now a matter of right when it is demanded by the municipal council of a city and supported by a favourable motion on the part of the Chamber of Commerce, the Consultative Chamber of Arts and Manufactures, the Council of the Arrondissement, the Council-General, and the majority of the municipal councils of the district affected.

The creation of the Council is authorized by decree.

The members of these councils are elected for six years by their peers. The electors of the working members are workmen, foremen, and overseers, when they take part in the material execution of the work; the electors of the employers are industrial and commercial employers and those overseers (*contremaîtres*) who fulfil functions of supervision and management. In either case electors must be at least twenty-five years of age and have accomplished at least three years of apprenticeship.

Women can vote as well as men; they are even eligible since a law of the 15th of November, 1908. The candidate must be at least thirty years of age, and must be a *prud'homme* elector, or must not have retired from his profession for more than five years.

The council is composed of employers and employés or employers and workmen in equal numbers. It always comprises at least two members of each category. Workmen are appointed by workmen, employés by employés, and employers by employers.

After election the *prud'hommes* appear before the civil tribunal, which proceeds to receive them. "You swear," says the president of the

court, " to fulfil your duties with zeal and integrity and to keep secret your deliberations? " Their right hands raised, the *prud'hommes* respond, " I swear it."

They then elect, among themselves, by secret ballot, a president and vice-president. If the president is an employer the vice-president is a worker, and *vice versâ*. The president should alternately be employer or employé. He is elected annually.

Each council or section of a council comprises a bureau of conciliation and a bureau of judgment. When the interested parties present themselves for the hearing, they may be assisted by an advocate or an attorney, or if they prefer, one of their colleagues, employé, workman, or fellow-employer. The judgments rendered are final, if the amount of the claim does not exceed £12; if it exceeds that sum, it may be taken on appeal to the civil court.

If a *prud'homme* councillor fails in his duty, he is punished by censure or suspension, by order of the Minister of Justice, or even by dismissal by decree.

The *prud'hommes* wear, at hearings and at public ceremonies, a silver medal attached to a ribbon, pinned upon the left breast. On the face of this medal is the profile of the head of

the symbolic Republic, upon a background of laurel and olive-leaves; on the reverse a woman stands upright and facing the spectator in a court-room, and with a conciliatory gesture she brings together an employer and a workman, who take one another's hands: an emblem of justice and social peace.

The Commercial Tribunals.

The rights and obligations of merchants, the formation of commercial societies, and bankruptcy proceedings are regulated by a special code and particular laws. The cases arising from the application of these laws are submitted, as a rule, to tribunals composed of merchants and appointed by election. The electors are the French merchants, members of commercial companies, captains of liners, masters of coasting vessels, shipbrokers, maritime insurance brokers, etc., provided they have paid patent fees for five years and have resided for the same term in the district of the tribunal. The list of electors is drawn up by the mayor and by two municipal councillors; those interested persons whose names are omitted can claim inclusion before the *juge de paix*. Candidates must be thirty years of age. At present women are not eligible; but they have been electors since an Act

of 1878, which Jean Macé brought before the Senate.

When, for lack of a sufficient number of commercial electors, there are no commercial tribunals, the civil tribunals sit as commercial courts. In all matters decided by these courts the procedure is greatly simplified, instances are far more rapid than usual, and the expenses are much lighter.

The judicial functions thus fulfilled by commercial men are gratuitous, and are exercised for a term of two years. The elected candidates take the oath before the Court of Appeal. They wear, at hearings, the robe of black silk and the bonnet embroidered with silver.

The litigants are represented before them by mandatories, of whom some, appointed by the court itself, are known as attorneys (*agréés*, not *avoués*). Advocates registered as members of a bar may plead before the commercial tribunals.

The judgments rendered are final where the interest of the litigant does not exceed a certain sum; in other cases they may be the subject of appeal in court. Appeals are relatively rare. The commercial courts work, on the whole, very smoothly, to the great advantage of the pleaders. These courts are an institution which, although

perfected in our days, is of very ancient origin. Under the *ancien régime* the commercial magistrates were called judge-consuls, and even to-day the commercial courts are often spoken of as the *consular jurisdiction*.

Administrative Tribunals.

Administration and justice are two separate domains. The better to ensure their reciprocal independence, the disputes arising out of the execution of the commands of the administrative authorities are not submitted to the judicial authorities. A Minister or a prefect issues an order. If this order is illegal the Government may be interpellated in the Chambers, but the civil courts will not have the right to annul the order. It is not their place to judge the executive power nor its officials. This is a principle which was solemnly proclaimed by the Revolution. An Act of 1790 forbids the judges, under penalty of forfeiture, to interfere in any manner in the operations of the administrative bodies. If a civil court should ever be approached with a dispute relative to an order of the Government or its agents, it must declare itself incompetent. All difficulties of this kind are taken before a special jurisdiction, known as the administrative jurisdiction.

Councils of the Prefecture.

We have already spoken of the Councils of the Prefecture in connection with the organization of the prefectures. These Councils are bodies which play not only a consultative part but form the first degree of the administrative jurisdiction.

Let us suppose that the administration of direct taxes has taxed a citizen too highly. The taxpayer has received his schedule and finds upon it an unjustifiable increase, against which he wishes to protest; he must address himself to the Council of the Prefecture.

A railway has been built in front of my door; my house was not required; I have not been expropriated; but an enormous embankment blocks the view from my windows; I can no longer see well within doors; my property has lost the greater part of its value. I protest. Here again is an administrative action whose results must be estimated. I cannot take my claim to the civil court, but I can submit it to the Council of the Prefecture.

My neighbour has been authorized by the administration to instal an unwholesome or dangerous establishment of some kind. If I wish to complain, it is again to the Council of the Prefecture that I must turn.

I am free to introduce my claim by a petition to the council or by an usher's writ. The Council will appoint a reporter; he, if he think it advisable, will order an inquiry or examination by experts; to him I shall forward memoranda, which I may complete at the hearing by verbal explanations. The Council will then pronounce its decision, which is called an order or resolution. If I am not satisfied I may carry the matter before the Council of State.

The Council of State.

The Council of State is a large body which has various attributes. Sometimes it is required to advise the Government; sometimes it prepares by-laws for the public administration; sometimes it pronounces upon contentious affairs. It is divided into several sections: legislation, justice, and foreign affairs—interior, public instruction, fine arts, and religion—finances, war, marine, and colonies—public works, posts and telegraphs, agriculture, commerce and industry, labour and social foresight—sections and subsections for consideration of disputed claims, etc. The President of the Council of State is the Minister of Justice; but this presidency is somewhat theoretical; it is in reality delegated to a vice-president, assisted by five presidents of sections.

There are thirty-five councillors in ordinary service and twenty-one in extraordinary service, all appointed by decrees issued in the Council of Ministers upon the proposition of the Keeper of the Seals. The first are selected from among high officials and the masters of requests, of whom we are about to speak. They must be at least thirty years of age. The second are the directors of Ministries, associated with the Council in order to deliberate upon matters arising from their administration.

The masters of requests, to the number of thirty-seven, are entrusted with the preparation of *dossiers;* they must be at least twenty-seven years of age; they are appointed by decree. There are also twenty-eight auditors of the first class and twenty-two of the second-class, recruited by competition; they are the younger auxiliaries of these important assemblies.

As an administrative jurisdiction the Council of State was reorganized by a recent Act (April 8, 1910). It deliberates sometimes by sections, sometimes in a public assembly for the settlement of claims. When it assembles thus as an administrative tribune it cannot be presided over by the Minister of Justice; the influence of authority must not make itself felt in judicial decisions. There are also, as in the ordinary courts, repre-

sentatives of society; here they are called commissaries of the Government.

Suppose that an official arrogates to himself an authority which is not his, and takes measures prejudicial to your interests. You can cite him before the Council of State for exceeding his authority. It is also the Council of State which judges, in the last resort, cases upon which the Councils of Prefecture have pronounced. Private persons and administrations alike may be defended by special advocates, who are at the same time advocates in the Council of State and the Court of Cassation. An inquiry is held, a reporter appointed; the commissary of the Government concludes the matter in public audience and the Council delivers its decision, which is binding upon all those interested, State, departments, communes, and private persons.

Tribunal of Conflicts.

Although the civil tribunals cannot be cognizant of the actions of the administration, the administrative tribunals, on the other hand, cannot be cognizant of civil causes, notably those in which property is in question. What would happen were one or the other to exceed its functions? Or if, by excess of prudence, either declared itself incompetent? In the first

case there would be what is known as a positive conflict; in the second case, a negative conflict. How evade this difficulty? To bring the two jurisdictions into agreement the law has established a supreme tribunal, which is known as the Tribunal of Conflicts, which, presided over by the Keeper of the Seals, comprises three Councillors of the Court of Cassation and three Councillors of State, appointed by their colleagues, and also four other members, titulars and assistants, elected by the former.

The Court of Accounts.

Before the Revolution there were a certain number of Chambers of Accounts—one in Paris, nine in the provinces—whose mission it was to verify the public accounts and to judge those responsible for them. They were suppressed in 1791, but an Act of 1807 re-established the jurisdictional control over the accounts of the State departments and communes, which was confided to a single Court, composed of three chambers, with a president in chief, three presidents, eighteen master-councillors, ninety-six referendary councillors, and twenty-six auditors, all appointed by decree on the nomination of the Minister of Finances. Only the master-councillors take part in deliberations; the referendary

councillors, with the aid of the auditors, make reports upon the matters to be examined. Here again a procurator-general, assisted by an advocate-general, represents the interests of society.

The Court of Accounts exercises its jurisdiction over all the agents who have to deal with the public funds, notably the officials entrusted with the collection of taxes. It verifies the order, regularity, and correctness of receipts and expenditure. It pronounces decisions in the last resort; they may, however, be petitioned against before the Council of State on the grounds of excess of authority, incompetence, or errors of form. These decisions declare whether the administration of the agents may be ratified as correct. If the court discovers malversations it has not itself the right of punishment; the procurator-general warns the Minister of Justice and the criminal law steps in.

Military Justice.

To maintain the necessary discipline in the army its officers may inflict punishments upon their subordinates, the maximum penalty being two months' imprisonment. Certain particularly serious infractions of military duty constitute misdemeanours or crimes. These crimes or misdemeanours are tried by special courts composed

of officers or under-officers superior in rank to the accused. These courts, which sit at the headquarters of the army corps, are known as Councils of War. In the present state of the law they also try crimes and misdemeanours in common law committed by soldiers. At these Councils of War a commissary of the Government represents the public ministry, and a reporter fulfils the functions of an examining magistrate, and there is also a *greffier*, or clerk of the court. Since the Act of 1906 the judgments of the Council of War are amenable to the Court of Cassation. A reform of military law is at present under discussion in Parliament.

You see how vast and complex is our judicial organization. In these chapters I have only been able to indicate its essential outlines. If these rapid glimpses have seemed a trifle austere, remember that Justice is a grave and solemn personage who rarely smiles, but without whom your honour, fortune, and life would be at the mercy of force and violence.

PUBLIC EDUCATION

XI

PUBLIC EDUCATION

The Middle Ages.

During the whole of the Middle Ages the Church retained a monopoly of teaching. Charlemagne, supported by Alcuin and Théodulf, protected and developed the episcopal and monastic colleges. After him the clergy remained a great teaching body; it was the bishops who gave masters the authorization to follow their profession; and there were, in the country parishes, small schools directed by the curates; while in connection with the cathedrals and abbeys there were great colleges like those of Paris, Chartres, Reims, and Cluny. In these great colleges men taught, but in a very insufficient and somewhat naïve fashion, what were called the seven arts: grammar, rhetoric, logic, arithmetic, geometry, astronomy, and music. The best students then learned theology, which was regarded as the crown of all studies.

The College of Paris quickly assumed a great importance: thither came students from all parts of Europe: under Philippe Auguste the clerks who swarmed in the great seminary figured in all solemnities. They were very often sad scoundrels, against whom the preachers fulminated. "For drinking and eating," said a preacher of the twelfth century, "they have not their like; devouring at table, but not devout at mass; they yawn at work, but at the festival they fear no one." They were often involved in brawls and riots against the *bourgeois* of Paris.

The poorest of them gradually came to benefit by private charity. Houses of refuge were founded in which they received board and lodging. These small hospitable establishments later became colleges of bursars, like that of Robert de Sorbon, chaplain to St. Louis, which was opened about 1257 and became the nucleus of the Sorbonne. At the end of the twelfth century the students had already formed powerful and privileged associations. A strong solidarity of ideas and feelings gradually established itself in the population of the schools, and gradually collectivities were formed which were called Universities. These university corporations are mentioned early in the thirteenth century in the bulls of the Pope and the royal charters.

Public Education

Philippe Auguste removed the University of Paris from the civil jurisdiction and the Cardinal-Legate Robert de Courçon gave it, in 1215, a constitution which contained regulations as to the course of study, the examinations, and even burials. About the same time the University of Montpelier was created. These Universities were then veritable religious confraternities; masters and students alike were tonsured. But hardly were they in possession of their privileged status when they entered into conflict with the Bishop of Paris and the Chancellor of Notre-Dame, and, to escape from their authority, placed themselves at need under that of the Pope.

The University of Paris.

In a few years the University of Paris became an active centre of intellectual life. It invaded the whole of the Montagne Sainte-Geneviève and covered it with scholastic buildings. It was divided into four faculties: arts, theology, law, medicine. The word "arts" was then used in a very wide sense, and signified notably letters. The faculty of arts was the most important. The students in this faculty were divided into four great regional groups or "nations": French, Picards, Normans, and English. Each nation appointed its own chiefs or magistrates. To-

wards the middle of the thirteenth century they also chose a common superior who took the name of "rector." We shall find the majority of these expressions in modern Universities.

The papal bull *Parens scientiarum*, published in 1231 by Gregory IX, gave the University of Paris a definite charter. After revolting against the authority of the Bishop of Paris, the clerks had come into conflict with the King and had begged the Pope to defend them. The Pope authorized them to draw up their statutes themselves, and permitted the masters of the University at need to suspend their teaching (or as we should say to-day, to strike) in order to protect their independence.

After this famous bull the University of Paris was, as before, extremely turbulent. In the first place there were resounding conflicts with the mendicant Orders, whose idleness they vehemently denounced. They continued also to wrangle with the Bishop and the King.

In the fourteenth century the intellectual life of France redoubled its intensity. There were schools even in the smaller villages. There reading and writing were taught, with a little grammar and the Catholic liturgy. These schools disappeared at the beginning of the fifteenth century and a great number were not revived until

after the Revolution. In the towns also the parish schools multiplied, as well as the monastic and capitulary schools; there the scholars learned by heart, without much method, the elements of grammar, and sacred song also was taught.

The Universities had become more and more prosperous. Universities were created at Toulouse, Orléans, Angers, and Avignon. That of Paris was famous throughout the whole of the civilized world. It was said that it and the Pope were the two lights of the world. The number of the masters on the Montagne Sainte-Geneviève rose to more than a thousand; the multitude of students was incalculable. In processions they stretched from one end of Paris to the other.

But presently symptoms of decadence set in. The theological licence was granted with increasing complaisance; the multiplication of colleges militated against the unity of studies; the scholastic philosophy, which in the Middle Ages had assumed a great importance in the teaching world, became dry, sterile, and exhausted; the faculty of arts insensibly divorced itself from literary culture, and the University of Paris, divided by civil wars and religious discord, alienated the national sentiment to the point

of embracing the English party in the fifteenth century and condemning Joan of Arc.

There were many other teaching institutions; new Universities even were founded, at Caen, Bordeaux, Poitiers, Valence, and Nantes; and after the Hundred Years' War the students began to flock back again. But the methods were detestable—the teaching fell more and more into mediocrity, and masters and doctors had no other care than to defend their prerogatives. Louis XII, hoping to instil a little order amid this anarchy, issued ordinances which caused a seditious rising among the students and forced the Provost of Paris to proclaim a state of siege.

From the Sixteenth Century to the Revolution.

In 1560-61 the States of Orléans demanded the reform of University studies and manners; this demand, however, was not granted until thirty-five years later, under Henri IV. The King appointed a commission composed of the greatest persons in the State: Harley, Tron, Séguier, etc., and this commission undertook to restore discipline and improve the level of teaching.

It forced the students to wear fitting clothes,

recommended them to wear bonnets in preference to hats, and enjoined them to avoid all loose and disorderly behaviour. In teaching, it happily replaced the works of the Latin decadence by the most beautiful fragments of the great masters of Greece and Rome. At the same time it amended the interior rule of the colleges.

But the reformed University soon encountered a keen opposition on the part of the Jesuits, who, after having obtained authority to teach in France, had been expelled, and allowed by Henri IV to return. In a short time the Jesuits opened a great number of colleges, in which the children of the aristocracy in particular were taught and moulded to good manners.

In 1762 a decree of the Parliament of Paris condemned the doctrine of the Jesuits "as perverse, injurious to Christian morality, pernicious to civil society, seditious, and hostile to the rights and nature of the royal power." The goods of the Order were sequestrated, the Fathers dispersed, and the direction of their colleges confided to bureaux of administration composed of the archbishop or bishop, the president and procurator-general of the court, municipal officers, and notables. The University of Paris received a portion of the heritage of the Jesuits, and notably the College of Louis-le-Grand,

Praiseworthy attempts were made to raise the standard of teaching. There being a lack of lay teachers, masters were borrowed from the secular clergy; some of these were able, like the celebrated Abbé Delille, who began by teaching an elementary class at the College of Beauvais; but, on the whole, in spite of noble efforts, the reform was stillborn.

The Revolution.

The Revolution suppressed the University corporations, as it did all corporations; it also suppressed all the teaching Orders: Oratorians, Sulpicians, Eudists. The National Assembly proclaimed it obligatory for the State itself to organize a system of public instruction, common to all its citizens, and gratuitous "in respect of those departments of instruction indispensable to all men." Condorcet drafted a magnificent plan of Republican education with three standards, corresponding to the three present orders—primary, secondary, and superior. The Constitution of 1793 once more laid down this principle: "Society shall favour with all its power the progress of public knowledge, and place instruction within the reach of all citizens." But the Revolution left its work unfinished. It created a certain number of the great colleges

of France: the Polytechnique, the Conservatoire of Arts and Crafts, the School of Oriental Languages, and the Museum; but it did not succeed in organizing that system of public instruction whose necessity it had recognized.

The Nineteenth Century.

An Act of the 10th of May, 1806, followed by a decree of the year 1808, created, under the name of Imperial University, a vast body of professors, instructed to assure, in the name of the State, the education of childhood and youth. At the head of the University was placed a Grand Master, appointed by the Emperor. This Grand Master is to-day the Minister of Public Instruction. The University was divided into as many academies as there were Appeal Courts in France. Each academy was administered by a rector, assisted by one or several academy inspectors, as well as an academic council. Three degrees of education were instituted: primary education, given in the communal schools; secondary education, given in the *lycées* and colleges; and superior education, given in the faculties. The University had the monopoly of teaching. With the exception of the seminaries, no teaching establishment, either lay or religious, could be instituted outside the University without the authorization of the Grand Master.

The Restoration maintained the University and its monopoly, but subjected it to the preponderating influence of the clergy; primary education was even officially placed in the hands of the bishops between 1824 and 1828.

The monarchy of July established a certain limited liberty in primary teaching. The Act of March 15, 1850, suppressed the monopoly in secondary instruction, and another Act of 1875 accorded liberty of superior instruction. But an Act of 1904 prescribed that the teaching of the religious congregations must be abolished within a term of ten years. The State still reserves the right to confer University degrees and diplomas.

During the last thirty years the Republic has realized profound reforms in the three orders of education. Never has a more potent and generous social effort been accomplished with the noble object of extending education.

The School.

In the first place, the Republic has solidly established primary education on a triple foundation: it is compulsory, gratuitous, and non-religious.

According to the statistics for 1860, three-quarters, and even five-sixths, of the inhabitants of certain departments were still absolutely

illiterate. Here was a source both of danger and humiliation to a country possessed of universal suffrage. The Act of 1882 determined that primary instruction should in future be compulsory for children of either sex between the ages of six and sixteen. While imposing upon the father of a family the duty of imparting to his children elementary knowledge, just as the law already compelled him to provide them with the food necessary to their subsistence, the law does not compel him to send them to a public school: he can have them brought up in his own house or in a private school. But a scholastic commission, composed of the mayor and the municipal councillors, must see to it that this obligation does not remain a dead letter. Unhappily these scholastic commissions are seldom efficacious. "And yet," said Jean Macé, "I am forced to light my carriage lamp, and if I fail to do so the authorities will not fail to prosecute me, because it is not only my carriage that is in question; because it may meet people on the roads, may run over a child. Why, then, should I scruple to force the negligent to light the lamp of knowledge in the minds of their children? Are we not all concerned to see that these minds, in which all is darkness, shall not sooner or later cause destruction?"

Compulsory education should be gratuitous. The great founders of primary instruction in France, Jules Ferry and Ferdinand Buisson, did not wish the occupants of the school benches to be distinguished as paying pupils and non-paying pupils. Communes had been known where poor little girls received a less careful education than the daughters of wealthy families. In a school in Bellac there was a bench for rich children and a bench for poor children. The Republic wished to put an end to these scandals.

Finally, the motto of primary instruction comprises a third term—secularity. The State provides instruction by means of lay teachers instead of religious teachers, because these latter are amenable to an authority independent of the State. But it does not wish this teaching to clash with private beliefs, whatever these may be. On the contrary, primary instruction should be neutral, in the sense that it should respect private convictions and avoid all that might give rise to conflict in the minds of children. There are plenty of subjects to be studied apart from religion: reading, writing, grammar, arithmetic, the elements of French literature, geography, French history, natural and physical sciences, agriculture, hygiene, civic instruction, and finally those eternal rules of morality as to which all civilizations are agreed.

Before leaving the primary school the scholar passes certain examinations for the primary certificate. At the delivery of these certificates the cantonal delegates and the primary inspector are present. But the complex administration which presides over the diffusion of primary instruction must be further described.

Primary Instruction.

Furnished with the primary certificate, the French child may seek to complete his education by following a complementary course or by spending two or three years at the superior primary school. Thus he may obtain the elementary certificate or *brevet*, or if he is industrious and persevering, the superior certificate. He may then enter a manual school of apprenticeship, a professional school, or a practical school of agriculture. These last establishments are not really dependent upon the Ministry of Public Instruction; they are under the supervision of the Ministers of Commerce and Agriculture respectively; but they are none the less parts of that mighty State organism which, in Republican France, attends to the teaching of the people.

To direct all these schools masters are required whose experience equals their devotion. The

salaries of this immense staff of teachers are paid from the national budget. The school-teacher learns his profession in a normal primary college; he begins as a probationer, and then obtains the "certificate of pedagogic aptitude"; and the Prefect appoints him on the nomination of an inspector of academies. The directors and professors of the superior primary colleges are, on the other hand, appointed by the Ministry.

The teaching staff of the primary schools is, like all State services, subjected to certain rules of discipline. If a teacher commits a contravention of these rules, the Inspector of Academies may reprimand him. Severer penalties cannot be inflicted by the inspector alone; a deliberation of the departmental council is necessary. This council consists of the Prefect, the Inspector of Academies, the director and directress of the normal schools, the two primary inspectors appointed by the Minister, four councillors-general elected by their colleagues, and two schoolmasters and two schoolmistresses of the department, also elected by their colleagues. A reasoned notification from this assembly is necessary before the Inspector can pronounce a censure against a teacher, or before the Prefect can dismiss him. The council also has the right

to forbid a teacher to exercise his profession for a term or for ever. In case of dismissal or interdiction, the teacher may appeal to the Superior Council of Public Instruction, of which we shall speak later. The departmental council meets at least four times a year; it has to supervise the application of programmes, ensure the hygiene of schools, and enforce respect for discipline; it also appoints the cantonal delegates, choosing them from the guardians of the primary schools.

Secondary Education.

Secondary education is that which pupils receive in *lycées* and colleges and private establishments of the same order. It is a more complete education than that obtainable in the schools. Its object is less to provide the child with practical knowledge than to form its mind, develop its taste, and accustom it to right intellectual methods. It comprises French literature, history, geography, mathematics, physical and natural science, and foreign languages, dead or living. Naturally all the pupils do not follow the same courses; their families are free to select between several types of education. The study of the great classic authors of Greece and Rome is destined, as Jules Ferry remarked, to "establish a serious and fruitful commerce between

young minds open to all that is beautiful, thrilled by all that is generous, and the immortal works that were born, beneath the transparent skies of Attica and on the heroic banks of the Tiber, of the youth of humanity."

The *lycées* are established, directed, and supported by the State; the cities must always be responsible for part of the expenses of building and installation; the "provisor," "censor," steward, professors, and teachers are appointed by the Minister. The teaching staff is recruited from the superior normal college and the Universities.

The colleges are founded and maintained by the communes; they are supported by the communes out of the rates and taxes, or administered by the principal.

Lycées and colleges prepare their pupils for the *baccalauréat*, an examination passed before the faculties, which is required upon entering a great many administrative careers.

Education of Girls.

Under the Second Empire a great Minister of Public Instruction, Victor Duruy, endeavoured to establish a system of education for girls. He did not dare to go so far as to open the *lycées* and colleges to them, but he organized courses or

classes at which they could receive almost the same lessons as did their brothers. This innovation provoked a keen opposition on the part of the Church, and the classes founded by Duruy did not outlast his administration. His idea was resumed and completed in 1878 by a deputy who is to-day a Councillor of State, M. Camille Sée, and was supported by Jules Ferry. *Lycées* and colleges for young girls were created and placed, like the boys' colleges, under the authority of rectors and inspectors. "We do not," said Ferry, "wish to create learned women, sceptical women, but women who know how to reason. We wish the habits of reason and scientific methods to enter rather more fully than they have done up to the present into the education of women."

SUPERIOR EDUCATION

The Academic Councils.

There are, as I have said, as many university districts as there are Courts of Appeal. They are governed by rectors, who have under their orders, in each department, an Inspector of Academies, and are assisted by Academic Councils. These councils are composed of members *ex officio*, members elected by the

Minister, and members elected by their colleagues: rector, inspectors, deans of faculties, provisors of *lycées* and principals of colleges, councillors-general, municipal councillors, and professors. They give their opinions as to the regulations, budgets, and accounts of the public secondary schools. They enact, subject to appeal to the superior council, disciplinary measures proposed in respect of the members of the teaching staff of the public or private secondary schools.

Superior Instruction.

In 1789 France had twenty-two Universities. They provided the whole course of education. The modern distinction of three orders did not exist. Children entered the University at nine or ten years of age; they left at seventeen or eighteen as masters of arts, or at twenty-one or twenty-two as graduates in theology, law, or medicine.

It was hardly likely that the Universities, with their ancient organization, should have survived the Revolution. They had been privileged corporations. They had to disappear along with privileges and corporations. The Constituent and Legislative Assemblies began the process; the Convention finally condemned them by an

Act of September 15, 1793; but amid all the dangers and intestine discords which the country suffered the will of the best citizens was impotent. A certain number of special schools were opened, of which I shall presently speak; but no public system of education was established on a durable basis.

The First Empire created in 1806, under the name of the Imperial University, an organization charged exclusively with teaching and public education. The faculties were increased to four: letters, sciences, law, and medicine; but they were granted no autonomy, being absorbed into the University (in the singular)—that is, the great teaching body as a whole—which was under the authority of the Emperor, and they remained mutually isolated instead of as before forming regional Universities.

This isolation had the grave drawback of sterilizing superior education during the greater part of the nineteenth century. As far back as 1872 Jules Simon demanded the foundation of a certain number of intellectual capitals, in which should be united, at the disposal of the young people of France, all the resources necessary to the complete development of their minds. The greatest scientists—Claude Bernard, Pasteur, Saint-Clair Deville, and Hermite—were soon

associated with this idea. Science, indeed, has a triple office: intellectual, economic, and social. As M. Liard has truly said (the eminent vice-rector of the Academy of Paris—the rector is theoretically the Minister of Public Instruction), primary teaching itself cannot be fertile unless amenable to something higher than itself, and attaching itself thereto. It is an agent of distribution, not of creation; a channel, not a source. In other words, primary teachers have need of knowledge far more extensive than that which they endeavour to instil into the child; they themselves gather up the lessons which fall, like a fertilizing rain, from seats higher than their own; to teach a little they should know much.

Superior instruction is also a great source of wealth to a nation. Science to-day has for its tributaries the public administrations, the private manufactures, and even the fields and meadows of the country. Without science would there be railways, telegraphs, telephones? Without science would steam and electricity drive the machinery of mills and factories? Without science would not agriculture, viticulture, and arboriculture have remained eternally stationary?

Science also renders us services of the moral and social order; it is, to be sure, a human

accomplishment, and has its limits in our reason, but it gives our minds discipline and method, teaching us to discern the true from the false, the real from the chimerical, the possible from the impossible.

The Republic has therefore devoted long and patient efforts to the creation of a certain number of Universities, which are centres of free research and disinterested study. These Universities consist of various faculties, which are related and united. They vary in importance, and are not all equally prosperous; but some have considerably developed of late years.

A liberal autonomy has been granted to all. They form a body possessed of a civil personality, and therefore are able to profit by the liberality of cities, societies, or persons. They have resources of their own. They are free to found laboratories, chemical institutes, or classes inspired by the needs of the district.

They are administered by a general council, of which the rector is president, and which comprises the deans and elected delegates of each faculty. This council manages the patrimony of the University, deliberates as to the organization of classes and conferences, and judges contentious or disciplinary difficulties affecting the teachers in the superior colleges or faculties.

At the same time, each faculty has its own council.

The Superior Council.

In 1808 a Superior Council was instituted, which had important powers. The Act of 1850, however, altered the composition of this council. It admitted thereto archbishops or bishops, Protestant ministers, a member of the central consistory of the Jews, Councillors of State, and magistrates; it played a very trivial part in the life of the University, in comparison with the members of the council, and did not authorize the University to elect any of these representatives; they were selected by the Government. An Act of 1876 still left the council dominated by elements alien to the teaching world. However, Jules Ferry resolved to transform and revivify this languid and moribund institution. He successfully fathered an Act which completely reorganized the council, and recruited it exclusively from among professional elements. Of fifty-seven members, forty-eight are elected by the Institute and by members of the teaching profession. Nine, appointed by decree, are chosen from officials or ex-officials of the University administration or from among the professors of the three orders of public instruc-

tion. Four, also appointed by decree, are chosen from among the free or unofficial teachers of the country. The council has a permanent section, which studies such administrative questions as may be brought before it. It has also disciplinary and judicial powers, and notably it considers, as a superior jurisdiction, such appeals as may be brought against the decisions of the Academic Councils and the Departmental Councils. The professors or teachers cited before it may defend themselves in all liberty; they may even be represented by advocates.

The Minister of Public Instruction has also the assistance of a consultative committee, which aids him in the preparation of programmes or movements of the teaching staff; it is divided into three sections, corresponding to the three orders of teaching.

The Museum.

I have already mentioned that although the Convention was not able to set up a general organization for teaching, it did at least create a certain number of special schools, which for the most part are still existing. The oldest is the Museum of Natural History, which is best known by the lions and tigers and monkeys of the *Jardin des Plantes*. The Convention, to tell

the truth, did not create the Museum; it gave it a new organization. There had been a botanical garden since the seventeenth century, specially devoted to medicinal plants, and known as the *Jardin du Roi*. A museum of natural history had been installed there, and there was even a theatre for lectures. Under the direction of Buffon and de Jussieu the collection was rapidly enlarged. The Convention had only to transform an already flourishing institution. It converted it in 1793 into a special school for the study of natural history as applied to the advancement of agriculture, commerce, and the arts. The teaching was confided to the most illustrious scientists of the age—Lacépède, Geoffroy Saint-Hilaire, Jussieu, Lamarck, Daubenton, etc. It was Saint-Hilaire who organized the menagerie in 1794.

To-day the Museum, like the Universities, has achieved a civil personality. It comprises numerous laboratories, collections of zoological, geological, and mineralogical specimens, etc., and twenty professorial chairs. It is directed by M. Edmond Perrier.

The Polytechnique.

On the 21st Ventôse of the year II, following upon a report introduced by Barère, the

Convention issued a decree instituting a commission of public works. "It is of benefit to the public prosperity," said Barère, "it is of benefit to the mechanical genius of Frenchmen, and even more is it of benefit to the daily needs of internal circulation, to submit all the great works which the nation subsidizes in the ports, foundries, and workshops, and on the highways, to constant and uniform principles." The commission prepared the programme of a college of engineers, which was created on the 7th Vendémiaire of the year III. A few years later this college, where four hundred young men greedy for instruction were already at work, took the name of Ecole Polytechnique. The students who attended it obtained the scientific knowledge necessary to engineers engaged upon bridges and embankments, mines, powder and saltpetre works, docks and shipyards, and to officers of the engineers and the artillery.

The *Ecole Polytechnique* promptly became famous. To this day it has retained its original organization almost intact. It is dependent upon the Ministry of War. Students are subjected to a system of somewhat mitigated military discipline. They wear a uniform, which has on several occasions been altered, and which today is not quite as smart as it used to be.

THE CONSERVATOIRE OF ARTS AND CRAFTS.

Almost at the same time the Convention created the Conservatoire of Arts and Crafts. Grégoire, the reporter of the Act which founded it, defined the establishment as an industrial museum and college. The museum already existed in part. When Vaucanson died, in 1782, he bequeathed to the royal Government a collection of mechanical models and devices which he had installed in the Hôtel de Mortagne. Vaucanson was a remarkable mechanician, who had constructed some marvellous automata; a flute-player, a player on the tambourine and tabor, two ducks that ate grain and worms with as much appetite as though they had been alive, and an asp, which at a representation of Marmontel's *Cléopâtre* leapt hissing at the actress's breast. The artistic and industrial treasures left by Vaucanson were quickly augmented by the liberality of others and formed the first elements of the Conservatoire. In the year III the Convention decided that the originals of instruments or machines invented or perfected should be deposited in this establishment, and conferences were organized.

The administrative constitution of the Conservatoire and the organization of the lectures have

often been remodelled during the course of the nineteenth century. Recently they have again been subjected to considerable reforms. The Conservatoire of Arts and Crafts is dependent on the Minister of Commerce; it comprises permanent exhibition galleries, a library, and lecture-hall, where lectures are given and conferences held, which are gratuitous and attended by artisans and workmen.

THE NORMAL COLLEGES.

A few days after it had instituted the Conservatoire the Convention voted the establishment of normal colleges, or, rather, courses of lectures, whose aim it should be to train schoolmasters, to teach them to teach. On the 13th Prairial of the year II, in the midst of the effervescence of the Revolution, eight weeks after the execution of Danton and before that of André Chénier, Barère announced the project of opening in Paris a college "at which teachers should be formed, in order that they may then be distributed among the departments." "For four years now," he said, "legislators have been racking their minds to found a system of national education, to open primary schools, to establish different degrees or grades of instruction, to revise the study of science and letters, to

encourage the arts and to rear as Republicans the coming generation." He concluded that it was necessary to revolutionize youth as the armies had been revolutionized. A few weeks later, at the end of the year II, the Convention instructed its Committee of Education to present it with a plan for a normal college. Finally the College of Paris was created, by a decree of the 9th Brumaire of the year III, as a vast reservoir in which the mind of the democracy was to be steeped. In this Normal College of the year III science was represented by men like Laplace, Monge, and Berthollet. The attempt, however, did not at once succeed, and a short time afterwards the students were dismissed. Revived by the Empire, the Superior Normal College succeeded, in a corner of the immense University structure, in awakening and preserving the liberal tradition. In vain did the Restoration seek to degrade it to the level of a preparatory school. Michelet, Ampère, and others were able to maintain the standard of teaching in all its amplitude. Immediately after the Revolution of July the college recovered its original title. To this day, under the direction of M. Lavisse, it retains all its old reputation. It forms, like the Universities, but with a particular system of studies, the masters who are to teach in the superior and

secondary schools. For some years now residence is not compulsory.

There are many other Normal Colleges. There are, to begin with, primary Normal Colleges for young people of both sexes (very nearly one for each sex in each department) in which the teachers for the primary schools are trained.

In 1882 a Superior Normal College of primary teaching was founded at Saint-Cloud, which prepares young men for the professorial positions in the Normal Colleges for teachers and the superior primary schools.

In 1880, at Fontenay-aux-Roses, a Superior Normal College of primary teaching was founded for young women, which corresponds with that of Saint-Cloud.

In 1881, at Sèvres, a Superior Normal College of secondary teaching was founded for the purpose of training female professors for the *lycées* and girls' colleges.

The Republic, you will see, has realized the work projected by the Revolution. It has multiplied the establishments in which future masters and mistresses may be initiated into the difficult art of teaching.

The College of France.

Having created the system of normal education, the Convention ratified the existence of the College of France. This College was founded in Paris by Francis I at the beginning of the sixteenth century, apart from the University, which naturally objected to the innovation. It was known then as the King's College. The King's College began modestly with two professors, who were known as lectors or readers: a Greek reader and a Hebrew reader. The University accused both of heresy and had them arraigned before the Parliament. The King retorted by creating a third chair, this time of Latin eloquence. The King's College was thenceforth known as the College of Three Tongues. The number of chairs was afterwards increased.

Under the Revolution the King's College, or College Royal, became the National College or College of France; under the First Empire it was known as the Imperial College, and was enriched by a chair of Turkish. Under the Restoration it became the College of France once more, and inaugurated lectures in Chinese and Sanskrit. To-day its teaching extends over almost all the departments of human knowledge.

The College of France administers itself, apart from the University of Paris, under the authority of the Minister of Public Instruction. The professors are appointed by the Government from a double list of nominations drawn up by the Institute of France and the assembly of the professors of the College.

You must not of course regard this great scientific establishment as a college of secondary instruction. The lectures, which are public, are, as a rule, intended only for highly educated hearers. You will not commit the legendary mistake attributed to an ex-Minister of Public Instruction, who while visiting the College asked to be shown the dormitories!

Other Colleges.

The colleges I have already enumerated do not exhaust the list. France is full of educational establishments.

There are other colleges which are dependent upon the Ministry: the *Ecole des Charts*, or School of Records, where archivists and librarians are trained; the School of living Oriental Languages; and the *Ecole pratique des hautes études*, which is a centre of free historic or scientific research. There are even great French colleges or permanent missions abroad,

in Rome, Athens, and Cairo, where students or members study the local antiquities.

The Minister of Public Instruction is at the same time the Minister of Fine Arts, and has under his direction the National School of Fine Arts, the National School of Decorative Arts, the School of Gobelins Manufactures, and the School of Ceramics at Sèvres. Add to these the College of Rome, which has its home upon the Pincio, in one of the most beautiful spots in the world; it is also known as the Academy of France or the Villa Medici.

Under the Ministry of Agriculture are the National Agricultural Colleges of Grignon, Grand-Jouan, and Montpellier; the National College of Agricultural Industries at Douai; the National Dairy School at Mamirolle; the National College of Horticulture at Versailles; the National Forest School at Nancy, the National Veterinary Colleges of Lyons, Alfort, and Toulouse, the Stud College at Pin, and various practical schools of agriculture, farming, etc.

Under the Ministry of Commerce are the Central College of Arts and Manufactures of Paris, the National Schools of Arts and Crafts of Châlons-sur-Marne, Aix, and Angers, the National Practical School of Workmen and

Foremen at Cluny, the professional colleges of Voiron, Vierzon, and Armentières, the National College of Apprenticeship at Dellys, the National Schools of Horology of Cluses and Besançon, the College of Advanced Commercial Studies, and other manual, professional, and practical schools, already numerous, but certainly destined to increase in number.

The Ministry of the Colonies has a Colonial College; the Ministry of Public Works a National School of Mines and a School of Bridges and Highways.

The Ministry of War has at Saint-Cyr a well-known special Military College, in which are trained the officers of the army. A School of Applied Artillery and Engineering exists at Fontainebleau, a School of Cavalry at Saumur, a College of Administration at Vincennes, a Military School of Medical Service (*service du santé militaire*) at Lyons, and a School of Military Medicine and Pharmacy at Val-de-Grâce de Paris. Young under-officers who wish to become sub-lieutenants endeavour to obtain admission by examination to the Military School of Infantry at Saint-Maixent or the Military College of Artillery and Engineering at Versailles.

The Ministry of Marine at Brest has a Naval

College and a College of Naval Administration; in Paris a superior Naval College and a College of Maritime Engineering; at Bordeaux a Naval School of Medical Service; and there are also schools of navigation, schools for orphans, cabin-boys, mechanicians, reefers, steersmen, and pilots; torpedo schools, schools of sailing, stokers' schools, schools of hydrography.

THE BUDGET AND TAXATION

XII

THE BUDGET AND TAXATION

The Budget.

The tax or impost is the contribution which the citizen makes toward the mass of social expenses. When speaking of the national sovereignty and the States-General we saw that the liberty to vote taxes is an essential and inalienable popular right. No tax may be collected by any official unless it has first been the object of a parliamentary resolution. Every year the Chambers vote the Budget—that is, the whole mass of administrative expenses and the resources estimated. The name *budget* is derived from England, the English having practised the parliamentary system before the French; but the word itself is only an old French word Anglicized: *bougette,* a little purse. To-day the little purse has grown immeasurably in every country in the world.

The Budget is prepared and brought forward

by the Government. It is then discussed by the Chambers. It is annual; the sums credited can be spent and the taxes authorized collected only during the financial year to which the Budget applies; but as in fact the orders to pay and the recoveries of moneys outstanding cannot always be executed by the 31st December, each budgetary year is really prolonged for a few months beyond that date for purposes of liquidation. The duration of this term varies in accordance with the nature of the operations to be concluded. In other words, sums relating to the year 1910 may be paid in January or February, 1911; the financial year of 1900 was not definitely closed until July 31, 1901.

The budgetary expenditures are presented to the Chambers by ministerial departments, and each department is presented by chapters—that is to say, in special categories of expenses. The more numerous the chapters the easier the work of parliamentary control. No Minister has the right to exceed by a centime the figures of his allowance, nor employ the credits of one chapter for the expenses of another. If such irregularities occurred, they would be remarked by the Court of Accounts.

With regard to expenditure, the Chambers vote the receipts, which comprise the revenues of the

State domain, the products of its manufactures and industrial enterprises, of the posts, telegraphs, etc., the takings of the Customs, and, above all, the taxes.

Besides these, there are every year attached to the Budget a certain number of legislative provisions of a fiscal nature which constitute what is known as the *Finance* Bill.

On principle the whole should be voted by both Chambers before the 1st January, since that date is the point of departure for each budgetary term or "exercise." But the length of debates often retards the final adoption of the Budget. As no expense can be incurred without opening a credit, and as no tax can be collected without parliamentary authorization, the work of the administrations would be promptly stopped if the Government did not demand and the Chambers vote a monthly account, which is known in France by the too familiar name of the *provisional twelfth*.

The budgetary estimates may always be partially deranged by unforeseen events. The necessary expenses are sometimes less than the credits opened; the credits are then annulled. The expenses, on the other hand—and this, unfortunately, is most frequently the case—may exceed the original estimates. The Govern-

ment applies to the Chambers for supplementary credits.

When the expenses relating to a financial year have been liquidated and the corresponding receipts collected and banked, the accounts are submitted to a commission of verification; then the Court of Accounts makes its report to the head of the State, and finally to Parliament, which is called upon to pass a resolution as to the final auditing and closing of the year's accounts.

Thanks to these various systems of control the employment of public moneys is hardly ever the occasion of material irregularities or malversations. But the correctness of the Budget does not consist solely in the observation of the essential rules of public accountancy; it also demands a spirit of method and economy, and this spirit cannot be too strongly recommended to the Chambers and administrations.

Taxes.

Two great categories of taxes may be generally recognized: direct taxes and indirect taxes.

The State may demand annually from a taxpayer either a fixed sum or a tax which will vary according to the income or capital of the taxpayer. This would be a direct tax. It is

usually imposed according to lists or registers drawn up in advance by the proper administrative department.

On the other hand, the State may collect a certain sum, either fixed or in proportion to the values involved, upon the transference of properties by sale, gift, or inheritance, or upon the consumption of certain products. The taxpayer does not then pay the tax directly; he pays it at the moment of buying or inheriting or consuming. It is then said that the tax is indirect.

In the Past.

These two kinds of taxes were known long ago in Roman Gaul.

There was a direct tax upon the soil, or a property tax; another direct tax upon proprietors who had animals or slaves upon their estates or premises; a direct tax upon capitalists, merchants, and moneylenders. These taxes were paid sometimes in money, sometimes in grain, fruits, victuals, or clothing destined for the army.

There were also indirect taxes, and notably customs dues or tolls imposed upon the circulation of merchandise.

Under the Frankish monarchy the direct taxes

of the Roman Empire gradually disappeared, to be replaced by dues fixed by custom, but indirect taxes were increased to a frightful extent in the form of local tolls.

In feudal society the fiscal system assumed a still more extraordinary development. The right to levy taxes became the principal attribute of the *seigneuries*, or feudal lordships. To begin with, justice was an inexhaustible source of wealth, of revenue for the *seigneurs*. They pocketed all the fines, and when the accused was condemned to death had the right to confiscate his goods. The *seigneurs* could also tax their serfs and farmers. The nobles themselves were exempt from taxation. The direct taxes which weighed upon the serfs and farmers were the *taille*, or poll tax, the amount of which was often arbitrary, and the rights of lodging and procuration—that is, the obligation to provide gratuitous lodging on occasion for the *seigneur* and his followers.

The serf was, as was said, *taillable à merci, taillable haut en bas:* taxable at will, literally "from top to bottom." He also paid the *seigneur* a fixed sum known as *chevage*, and he also owed him the *corvée*, or a certain number of days of gratuitous labour.

The indirect taxes were greatly varied; there

were numerous tolls, dues of sale and of market. Moreover, the inhabitants of the *seigneurie* might be forced to have their grain ground at a *banal* mill, which means a mill declared common by a seigneurial *ban*, or order; they might be forced to cook their bread in a *banal* oven, all to the profit of the *seigneur;* and the *seigneur* himself was free to exercise the right of *banvin*, or, in other terms, might reserve, for a certain time after the vintage, the right of selling wine throughout the *seigneurie*.

Royal Taxes.

During this time the King had no other resources than the products of the royal domain —that is, the revenues, rents, or royalties from his lands or those of his vassals—and the taxes which he could impose in his quality of High Justicier. If a war broke out or a military expedition was to be fitted out, or if the King had to incur an exceptional expenditure, it was, of course, necessary to obtain money. He would then demand the assistance of the *seigneurs*, would ask their leave to impose taxes on their subjects, and the taxes thus obtained were known as *aids*. To collect them the King would sometimes, by means of commissaries, enter into negotiations

with the *seigneurs* or free communes; sometimes he would convoke the *seigneurs* in regional assemblies; sometimes, as we have seen, he would apply to the States-General. Except in these extraordinary cases the only subjects who could be taxed were serfs and commoners; nobles and ecclesiastics escaped all taxation. Little by little the King endeavoured to dispense with the consent of his vassals, and by his own authority to levy taxes in their domains. As according to feudal law military service was due to him wherever he exercised the high justice, he was able on occasion to convert this obligation into money. The royal taxes were thus gradually generalized; but they were still accidental and temporary. The States-General notably would not at first accord these taxes unless in respect of a definite circumstance. Gradually matters changed; in 1439 the States-General granted that the King, in order to maintain an army, should levy a permanent poll tax without demanding a renewal of their authorization. The States-General of 1484 endeavoured to resume the rights which custom had finally accorded; but after the reign of Louis XII they were scarcely ever convoked except when royalty, pressed by the need of money, did not feel itself strong enough to impose fresh taxes on the

country without their intervention. None the less, the royal taxes remained permanent. Only those regions possessed of provincial Estates were periodically called upon to vote this tax. Elsewhere the King levied it as he thought fit.

The "Taille" or Tally.

The royal tax was from the beginning modelled upon the old feudal forms. Thus as early as the thirteenth century a royal poll tax was imposed; at first exceptional and temporary, but later, from the reign of Charles VII, permanent. It very soon resulted in the suppression of the seigneurial poll tax, which survived it only here and there as a customary due. The word *taille*, or "tally," it appears, derives from a custom among the collectors of the tax of marking the payments of taxpayers by means of a notch upon a little slip of wood or tally-stick.

The royal tally, to give it its old name, was a direct tax which spared the nobles and the clergy, but weighed heavily upon the commoners and countryfolk. It was collected only in "countries of election, that is, in those which had no provincial States. The personal tally was a sort of general but extremely arbitrary tax upon the revenue of the taxpayer.

The "real" tally, less usual, less grievous, and therefore less decried, was imposed only on the revenue of real estate—always, of course, excepting the nobles and the clergy.

The distribution and collection of the tally was rather complicated. It was not royalty that directly determined the sum that each taxpayer was to contribute. Every year the King's Council drew up what was known as the warrant of the tally, that is, it determined the total sum, part of which must be provided by this tax, to be raised by the whole country.

It decreed: "We have need, for the coming year, of so many millions; of these the tally must yield us so much." The quota thus fixed was then distributed among the various *generalities* of the "countries of election." These were districts presided over by the *generals* of finances. Each generality then divided its quota among the administrative sub-divisions known as *elections*. The agents elected, or rather appointed by the generals, made a third distribution of the tally among the parishes, and lastly, in each parish local agents, really elected by the taxpayers, determined the sum to be paid by each. They were free to follow, in this work of individual taxation, such rules of valuation as they thought best, and they did not fail to favour their friends

and commit an act of injustice in respect of their enemies. In his admirable book on *The Royal Tenth* (*La Dîme Royale*) the great engineer who under Louis XIV constructed most of the city fortifications of France, Vauban, proposed to the King to replace all the taxes of the *ancien régime* by one single tax, the royal *dîme* or tenth, which all would pay, nobles, priests, and commoners alike. This courageous book was arraigned before the King's Council and condemned to the pillory in 1707. Several weeks later Vauban died of grief. "The tallies," he had written, "are assessed out of all proportion, not only in the gross, from parish to parish, but also as among individuals; in a word, they have become arbitrary. In the case of labourer and labourer or peasant and peasant the stronger crushes the weaker." And he spoke of the inveterate hatreds perpetuated in rural families on account of these disproportionate taxes which one would inflict upon another.

If I have given you all these details as to the reputation of the "tally," it is because there are still taxes distributed by contingents. The land tax, for example, and the property tax are fixed every year by the Chambers at a determined figure. The sum total of this contingent is divided among the departments. Each Council-

General divides the departmental contingent between the arrondissements.

The council of each arrondissement divides the contingent of the arrondissement among the communes. And in each commune controllers and distributors proceed to the individual distribution of the tax.

In the case of other taxes, as the property tax on buildings, the fraction due from each person is in the first place calculated according to revenue. The departments, arrondissements, and communes are not required to find a given sum, subject to division among the taxpayers; the State, on the contrary, applies directly to the taxpayers. The first category of taxes includes what are known as *assessed* taxes; the second, what are known as *shared* taxes. The distributors of the "tally" were both assessors and collectors. They took the product to the treasurer residing in the chief town of the "election." To-day, in the case of direct taxes, the service of assessment is separate from that of collection. The controllers of direct taxes, assisted by the local distributors, assess the tax and determine the individual shares. The collectors receive the sums due from each taxpayer and deliver them to the receivers, who in turn deliver them to the treasurers-general.

The Poll Tax.

Long after the institution of the "tally," under the *ancien régime* other direct taxes were added to it. In 1695, when Louis XIV undertook a war against Austria, the majority of the States of the Empire, and Sweden, coalized by the League of Augsburg, he established a general poll tax, which at first was to be payable, during the war only, by all the subjects of the kingdom, nobles, ecclesiastics, and even the Dauphin himself included. But the poll tax, suspended in 1697, became perpetual in 1701, and the privileged classes almost completely evaded it. The clergy redeemed themselves, a few years later, by a ransom of nearly £1,000,000, and the nobles obtained all sorts of abatements and modifications.

The poll tax, first established by class, was afterwards left to the intendants. In theory it was distributed proportionately to the revenue of the taxpayers, and in the case of those who paid the "tally" it was imposed in proportion to the amount of that tax.

The "Twentieths."

At the end of the reign of Louis XIV another tax made its appearance. It was fixed at a

variable fraction of the revenue. One day it would be a fiftieth, another day a tenth. Finally it remained at a twentieth. But the Government did not limit itself to raising a single "twentieth"; sometimes two, sometimes three, were levied at a time. The "twentieths" were imposed on the revenue from land, invested capital, offices, and industry. In principle the nobles and the clergy were subject to this tax, but in practice they managed to evade it in a great measure by means of subscriptions and free gifts.

"Aids" and the Salt Tax.

The indirect taxes were even more unpopular before the Revolution than the direct taxes. Most important of these were "aids" and the salt tax.

"Aids" were no longer, as before, an extraordinary assistance rendered by the *seigneurs* to the King. It was a consumer's tax imposed upon certain objects, such as wines and spirits. The *gabelle* was a tax on salt. The sale of salt was monopolized by the State, as to-day the sale of tobacco and matches is monopolized, and there were royal salt-granaries.

Voltaire had his jest as to "aids" and "*gabelles*."

"'Aid' we can understand, but 'gabelle' puzzles us.
Whence comes the word? 'Tis from a Jew, hight
Gabelus."

"There was, indeed," added the ironical Voltaire, "a Jew Gabelus, who had money dealings with goodman Tobias, and several very learned scholars derive the etymology of *gabelle* from the Hebrew, for we know that the French language comes from the Hebrew."

The origin of the word is really less legendary. *Gabelle* has the same root as the German *geben*, to give. From all time those who have established imposts have loved to declare that the taxpayers *give* their money freely.

However this may be, the "aids" and *gabelles*, under the *ancien régime*, formed a powerful administration, which eagerly squeezed the taxpayers. Remember the fable of La Fontaine:—

"Two mules there were: with oats was laden one,
The *gabelle's* silver made the other's load,
And this one fared full proudly down the road,
So fine his pack he wished it ne'er undone:
Exalted was his gait, and well
The traveller heard his tinkling bell."

The salt tax varied infinitely in different parts of France. Some provinces had succeeded in freeing themselves from it; others had redeemed themselves by the payment of a forfeit.

In districts known as regions of the little *gabelle* the consumers were obliged to buy from the royal granary, but they were free to buy only what salt they needed. In regions of the greater *gabelle* families were forced to buy a determined quantity of salt, which they had not the right to re-sell, and which was intended for daily use in pot and salt-cellar. This was known as the duty of the *gabelle*. The taxpayer had not even the right to employ the salt for salting preserved meats.

The Customs.

Before the Revolution there were innumerable customs dues, both on the outer frontiers of the country and on the internal frontiers, between province and province. Vauban, in *La Dîme Royale,* deplored the necessity under which every Frenchman found himself of dealing with so many officials when it was a matter of transporting produce. The internal custom-houses, according to Vauban, made the subjects of the King of France foreigners to one another.

The customs affected sometimes the importation and sometimes even the exportation of merchandise. Royalty often forbade the exportation of precious metals, jewels, grain, and stuffs, with the idea that the sale of these articles

abroad might impoverish or starve the country. But individual permission could always be obtained if the heavy export dues were paid.

In the matter of customs the territory of France was divided into *farms*. Five of these farms were united in the seventeenth century; they included Picardy, Champagne, Poitou, Berry, Anjou, Bourbonnais, and Burgundy; thanks to Colbert, merchandise began to circulate freely in those regions. But Colbert was forced to leave the provinces the option of choosing between the new system which he was establishing and that under which they had previously lived. Many kept to their old habits and their local tolls. On the eve of the Revolution Lorraine, Alsace, and the three bishoprics of Toul, Metz, and Verdun were treated precisely like foreign countries by the French customs.

SINCE THE REVOLUTION

Other Royal Taxes.

I have not yet exhausted the list of taxes known to the *ancien régime*. In 1492 Christopher Columbus, landing upon an American island, had remarked, with surprise, that the natives took pleasure in lighting one end of a bundle of dried leaves and sucking the

smoke through the other end. This exotic plant was soon introduced into Europe by the Spaniards, and the use of it became common, first of all in the Iberian peninsula. Jean Nicot, French Ambassador in Portugal (whose name is enshrined in *nicotine*), having heard at Lisbon that powdered tobacco was a cure for sudden headaches, sent a few pinches of snuff to Catherine de Médicis, who was subject to such attacks. Regarded at first as a remedy, tobacco was then treated as a dangerous poison. Louis XIII forbade the sale of it, and Pope Urban VIII went so far as to excommunicate smokers. But these prohibitive measures did not prevent the consumption of tobacco increasing. Colbert finally saw in this increasing use an unhoped-for source of revenue for the royal treasury. He reserved the privilege of sale to the State.

From the seventeenth century onwards the State also conceived the idea of constraining private persons to draw up certain contracts or judicial documents upon paper stamped with the royal arms, delivered by the State, or of subjecting the dating of these documents, by means of the agents of the Government, to a registration fee. We find these old practices still in use.

Before the Revolution there was an inextricable tangle of yet other taxes; duties were imposed on alcoholic drinks, cattle, and sea-fish; stamp duties on leather, duties on the manufacture of soaps, oils, etc.

The Revolution.

The Constituent Assembly found itself confronted by this multitude of taxes, and had at first the ambition to make a clean sweep of them. But on the advice of its Committee of Taxation it retained, while moderating them, the stamp duties and the duties chargeable on legal documents and transfers. It then undertook a great reform of the system of direct taxes.

In undertaking this difficult task it was animated by quite a new spirit. Formerly what was a tax? It was sometimes a tribute paid by one class to another, sometimes a tribute levied *ex officio* by the prince on the property of his subjects. From 1789 onwards the sovereign nation voted the taxes, and determined the proportion to be paid by each taxpayer. And what should this sum be? Should each citizen pay a tax by reason of the services which he personally expects from society? No. This sterile and egotistical view of taxation was replaced by the Revolution by a wider and more

generous view, which vivified and fertilized the idea of solidarity. The tax is not the payment for services rendered by the State to each citizen personally; it is the share which each citizen, in proportion to his financial abilities, should pay the State in order to liquidate the common expenditure.

The Land Tax.

Dominated by the fear of administrative caprice, so many examples of which had come before them, the men of the Revolution sought to establish, without privilege for any one, a tax upon the revenues of the soil. But to estimate these revenues they had at their disposal only the results of the labours of the intendants and the provincial assemblies, and they had, as well as they could, to distribute the new land tax at the rate of so many shillings to the pound of the old taxation. This new tax thus became a tax of *répartition*, not a tax of *quotité*. I have already explained the difference between these classes of taxation.

Later, in 1807, in order to infuse a little more justice into the land tax, a minute survey was commenced—that is, a general return of landed property. But this gigantic task lasted until 1850. The estimate of revenues was conse-

quently made at very different dates, and the survey could not really serve as a means of establishing fiscal equality throughout all France. Hence from the outset cases of injustice which time has only aggravated. All inhabitants of the country have known shocking examples of this injustice. Lands classed in a superior category as to fertility have gradually gone out of cultivation; woods have been cut down; vines have been planted here and there grubbed up. The survey and the tax have remained unchanged. An Act of 1894 fortunately prescribed a fresh evaluation of the income from land; but operations commenced only three years ago.

At present the tax upon building property is much better established than the land tax. It is based on the annual or tenantable value of houses and factories, estimated every ten years by the administration of direct taxes. Since 1890 it has become a "shared" tax.

Patents or Income Tax.

Created in 1791, suppressed in 1793, and re-established in the year III, patents have never since become extinct; but they have on many occasions been remodelled. Patent duties are payable upon supposed or professional earnings—

apparent earnings rather than actual; they are payable by all those who exercise, in France, a trade, an industry, or a profession, such as that of physician or advocate. The tax is calculated according to the tenantable value of the premises devoted to the exercise of these callings, and according to other external signs, which enable the assessor to presume the importance of the profits earned; for example, the number of clerks or workmen employed.

Doors and Windows.

The tax on doors and windows established by an Act of the 4th Frimaire of the year VII was theoretically suppressed in 1892, but hitherto this suppression has been without effect. This is a hybrid tax which is based both on a system of assessment and on a legal tariff, which in turn is based on the size of the population and the number of apertures, doors, or windows in the houses. People complain that it is not equitable, and that it is practically a tax on the air and light which enter the house.

Taxes on Personal Property.

The Constituent Assembly, wishing to tax the income from personal property, decided to impose a tax upon these revenues according to

certain external signs or presumptions, such as the amount of rent paid and the number of servants or carriage and saddle horses kept; and to this is added a tax equivalent to the value of three days' labour. During the revolutionary period the tax upon personal property became an income tax, the assessment of which was left to the arbitrary decision of committees of taxation, which were known as juries of equity. Later, an Act of the 3rd Nivôse of the year VII made the property tax in principle a tax upon rent, which thenceforth was collected together with the land tax. Since then, in 1820 and 1832, and more recently still, attempts were made to give the personal property tax the character of a tax on rent, while distributing the departmental and communal contingents according to the total of locative values. But neither the Act of the year VII nor that of 1832 was ever applied to the vast majority of the communes of France. The distributors were more preoccupied in achieving an equitable distribution of the tax than in obeying legal prescriptions which could not be executed everywhere in a literal and absolute sense; for rent, above all in the country, does not always correspond with wealth.

Income Tax.

The property tax on land and buildings, patent duties, the door and window tax, and the personal property tax are the four great direct taxes which feed the French Budget. On account of the drawbacks I have mentioned attempts are being made to ameliorate them. In respect of the land tax a decision has been arrived at. Numerous schemes have been considered with a view to correcting or replacing the other direct taxes. It has been sought to replace them gradually or suddenly by taxes which may be assessed more certainly upon each category of income or the total income of the taxpayer. In the preparation of these important reforms the Government and the Chambers have to consider many serious factors: the necessity of not disturbing the budgetary equilibrium, respect for justice and equality, and the fear of subjecting individual liberty to arbitrary administration. But it goes without saying that the taxpayers should be taxed, as the Revolution intended, in proportion to their means.

When the tax increases in the same proportion as the income it is said to be proportional. When it increases more quickly it is said to be progressive. If, for example, the taxpayer

should pay 4 francs per 100 on 100 francs of income, 40 on 1,000 and 400 on 10,000, the tax would be proportional. If he should pay 4 francs on 100, 50 on 1,000, and 600 on 10,000, the tax would be progressive.

Additional Hundredths.

The direct taxes form only part of the taxes imposed on the taxpayer. Independently of the tax properly so called, known as the principal, there are additional hundredths. By an additional hundredth we mean the hundredth part of the principal of the tax. These hundredths are collected either for the benefit of the State or for the benefit of the departmental or communal budgets. They are distinguished as general *centimes* (or State hundredths) or departmental or communal *centimes*. The departmental hundredths are voted by the Councils-General of the various departments or imposed by the law. The communal hundredths are imposed in accordance with a vote of the municipal councils, sanctioned, as the case may be, by a prefectorial resolution or a decree.

Assimilated Taxes.

There are also a certain number of taxes assimilated with the direct taxes—that is to say,

based upon individual lists and recovered by the collectors; taxes on property in mortmain—that is, on immovable property which does not belong to living persons, but to establishments, such as anonymous commercial companies, religious congregations, departments, or communes; taxes on mining royalties; duties on the verification of weights and measures, alcohometers, etc.; inspection fees paid by pharmacies, drug stores, and mineral water factories or warehouses; taxes on wheeled carriages, automobiles, horses, and mules; taxes on public and private billiard-tables; taxes on clubs, societies, and places of assembly.

Other taxes are imposed not for the benefit of the State, but for that of the communes; contributions in stones or in money for the upkeep of parochial and rural highways legally recognized; taxes on dogs; taxes of replacement in towns which have lowered the *octroi* duties on wines, ciders, perrys, and beers, and have replaced them by direct communal taxes legally authorized.

Assessment and Recovery.

All direct taxes are established or assessed by controllers, assisted in some cases by local distributors. Taxpayers may appeal. If they

think their assessment is erroneous, they will make a claim for discharge or reduction. If, having no actual complaint as to assessment, they solicit a reduction on account of embarrassment or poverty, they are said to claim a rebate or abatement. Claims for discharge or reduction are tried, if there is a dispute, by the Council of Prefecture, or in the second degree by the Council of State. Claims for abatement are dealt with by the Prefect and the Minister of Finances.

The recovery of direct taxes is effected by collectors, under the supervision of "particular" receivers and treasurers-general (the term "particular" being in contradistinction to "general").

Registration.

As under the *ancien régime*, the State has officials who reproduce or summarize, in special registers, certain deeds, declarations, etc., and who on the occasion of so doing collect fees fixed by the law.

The formality of registration has a double object; on the one hand, it establishes the date of a deed or declaration and ensures its preservation; on the other hand, it facilitates the collection of a tax. All civil, public, judicial, and

extra-judicial deeds are, unless formally exempted, subject to registration. Moreover, certain transfers of property, even when they are not established by a written document, are made the object of declarations. The fees of registration are fixed or proportionate, according to the nature of the deeds and the transfers in question.

Recent laws have profoundly remodelled the duties upon " mutation by decease "—that is, the duties payable upon inheritances. These duties were for a long time graduated according to the degree of relationship involved; in the case of an equal sum inherited, distant relatives would pay more than closer relatives. But to-day the amount of the duty progresses equably according to the importance of the sums received by the inheritors or legatees. Large fortunes pay more in proportion than moderate fortunes, and these more than small ones.

STAMPS.

All papers intended for civil and judicial deeds or writings which are to be produced in judicial processes pay the stamp duty. For such documents we are therefore obliged to employ paper which bears particular marks, the price of which varies according to dimensions. These sheets

bear the black imprint of a stamp depicting a woman holding a balance and the words "République française," an embossed stamp showing a woman seated, holding a bough, with the device "Enregistrement, timbres et domaines," and in the paper itself is a watermark, which gives the date of manufacture.

Other special stamp duties are charged on receipts, cheques, posters, railway quittances, passports, and game licences.

Other Attributions.

The administration of registrations is also charged with the recovery of a certain number of taxes: taxes upon insurance policies, taxes upon French or foreign bonds or stock, and taxes upon operations on the Bourse or Exchange. It also inscribes the charges which may be imposed upon real estate, such as interests or mortgages. Finally, it administers the State domain, which is divided, as you may remember, into the public and the private domain.

Indirect Taxes—Alcohol.

We have seen that before the Revolution certain taxes were imposed upon merchandise or other articles, sometimes at the moment of manufacture, sometimes at the moment of consump-

tion. It is still the same. Under the *ancien régime* there were "aid duties," or extremely complicated taxes, on wines and cider. The Constituent Assembly abolished these in 1791. They were restored under a new form by the First Empire and the Restoration. But at the end of the nineteenth century, in view of the dangerous development which the consumption of alcohol had attained, it was seen that a heavier tax upon brandy was essential, together with a lighter tax upon those beverages ordinarily described as hygienic, such as wine, cider, and beer.

Since 1900 these beverages pay only one tax, of which the payment is guaranteed sometimes by supervision during production and sometimes by supervision of the trade in these products. On the other hand, the law subjects brandy, spirits, absinthe, and other alcoholic liquids to a general consumer's tax, which has been sensibly increased of late-years, and in some towns an entry duty. Vermouths, liqueur wines, imitation wines, etc., are subjected, on account of their strength, to half the tax on alcohol. Retail dealers in wines and spirits, wholesale merchants, brewers, and distillers are also subjected to a special tax known as a licence.

Transport.

Those who undertake the business of carrying the public by carriages or boats, railway companies, and tramway companies, pay a tax assessed either on the nett receipts or on the price of seats or the transport fees for baggage or merchandise.

Other Articles Taxed.

Vinegars, candles, waxes, and playing-cards all pay taxes. French description-cards cannot be printed on any but the watermarked paper furnished by the administration. Foreign description-cards can be printed on blank paper, but the makers must submit the shape, size, and design for the approval of the administration.

No silversmiths' or goldsmiths' work may be made in France unless it contains a determined quantity of pure metal. To ensure observation of this rule the law has instituted bureaux of warranty, where the assay of gold and silver articles is conducted, and where the *titre*, "title," or degree of purity, is recorded by the imprint of a legal mark, and where, as you may suppose, a warranty fee is collected. The fisc, you will observe, is subtle and ingenious; it creeps in

everywhere. The enormous expenses of the State have to be paid: public administrations, services of social assurance, assistance, and foresight, pensions, salaries, and national defences.

Monopolies.

We have already seen that in certain cases the State reserves to itself the monopoly of some commercial or industrial exploitation, so that it may the more readily collect the consumer's tax. In France the State makes and sells tobacco, matches, and gunpowders. All the operations of planting, sowing, transplanting, cultivating, gathering, and drying tobacco are strictly regulated. The State buys tobacco of the planters; it also buys foreign tobaccos, and it manufactures snuff, which is not now much used, chewing tobacco, also going out of use, and smoking tobacco, including cigars and cigarettes, always in great demand.

Posts, Telegraphs, and Telephones.

Posts, telegraphs, and telephones are also a fiscal monopoly; but they also constitute a public service. The State levies duties upon the transport of letters, the sending of telegrams and telephone messages. These royalties, dues, and stamps far exceed the cost of the service to the

State, so that they represent, to a great extent, a tax.

SUGARS.

The State does not indulge even the child's love of sweets. It burdens sugar with a consumer's tax, and a refiner's or manufacturer's tax, as the case may be. It jealously supervises the production of molasses and glucose, and taxes all derivatives of sugar—syrups, sweetmeats, candied fruits, sugared biscuits, etc.; not one of these escapes the fiscal tax.

CUSTOMS.

The customs duties, which bring in the Budget a good £20,000,000 a year, are imposed on certain articles as they enter or leave French territory. The establishment of these taxes serves a double object. They are often intended to protect French agriculture and industry against foreign competition. They are also intended to fill the Treasury. Most civilized countries impose customs duties on their frontiers. Travellers who pass from one country to another are obliged to allow their baggage to be searched.

OCTROIS.

The same annoyance is imposed on those who enter towns where the *octroi* is in force. Most

communes draw their necessary resources from the product of additional hundredths or the revenues of forests or other communal property; but upon entering certain communes taxes are imposed upon alcoholic drinks, meats, fish, cheese, butter, fuel, fodder, etc. The communes, alas! like the State, have to spend a great deal and have to puzzle their wits in order to find the needful revenue.

MILITARY SERVICE

XIII

MILITARY SERVICE

The Greatness of France.

"The Republican party," said Jules Ferry one day, "has proved that it fully realizes that we cannot propose to France a political idea like that of such nations as free Belgium and free and republican Switzerland; France must hold a different ideal: she must be not only a free country; she must also be a great country, exercising on the destinies of Europe all the influence that is hers; she must extend this influence over the earth, and carry with her wherever she can her language, her customs, her flag, and her genius." Gambetta expressed the same idea when he called France the greatest moral personality in the world. By that he meant a nation with a collective conscience, a strong sense of her own unity, her traditions, her past, and her duties. "France," said Victor Hugo also, in 1871, on the morrow of her defeat, "is the motive-power of progress, the organ of

civilization, the pillar of the human race. When she totters all will crumble."

Patriotism.

Patriotism does not come into conflict with our duties toward humanity; it is, on the contrary, a necessary condition of those duties. The best way of loving our fellow-men is first of all to love that section of humanity which is nearest to us, which includes us, which we best know. Instead of scattering our affections and wasting our energies, let us try to concentrate them and employ them usefully in that corner of the world in which Nature has planted us.

The mother country is the material and moral patrimony which our ancestors have left to us, and which we in turn must leave to our descendants. It includes not only our native soil, but also our national soul, our common hopes and anxieties, our triumphs and our trials, our literature and arts, our scientific discoveries: all the pageant of ideas and feelings that is awakened in us by the name of France.

The Army.

France has need of a strong army to defend her independence and her honour against the attacks, always possible, of other nations. Among children the strongest makes himself

respected; among adults it is the same, subject to the intervention, in case of abuse, of the schoolmaster or the policeman. Among the nations there is neither master, nor, as a rule, policeman. With the progress of civilization an international Peace Tribunal has been established at The Hague; it has successfully settled a few minor disputes, but it has no means of enforcing its authority. The most sincerely pacific people, therefore, is always subject to surprises, to intolerable humiliations, or even to brutal aggressions. It must therefore be in a condition to defend itself.

In Former Times.

Under the *ancien régime* there was no national army. In the feudal ages the vassal was obliged to come forward and fight for his *seigneur* when required. Military service was due to the King from his fief holders. The *ban* was the convocation of his vassals by the King; the *arrière-ban* was the proclamation which the *seigneur*, summoned by the *ban* of the King, made of that *ban* in order to assemble his vassals. But the royal armies were more and more composed of French or foreign mercenaries, and the militia levied in virtue of the ancient right of *ban* and *arrière-ban* formed only a very small proportion of the forces. The troops paid by the King were, it

is true, very often employed to defend the permanent interests of the country, but they were more generally required to gratify the private will and personal ambition of the sovereign. The love of country was still confounded with devotion to the King.

The Volunteers of 1792.

When the Revolution restored the sovereignty to the people the conception of the army underwent a change. Monarchical Europe had threatened France with invasion and dismemberment. France herself then rose against Europe. The war was for her a necessity of public security. The independence of the nation, the very liberty of the citizens, was at stake. From 1791 the camps were filled with ardent and courageous youth. The national unity, for which the monarchy had been preparing for centuries, now appeared in all its force. "From every side," wrote one of the most illustrious soldiers of the Revolution, Gouvion-Saint-Cyr, "men ran to arms; all who were in a condition to support the fatigues of war flocked into the camps. Each man abandoned his studies, his profession, and armies were created which assured the triumph of France. Patriotism made up for everything." "The service of the country"—so proclaimed the law of May 4, 1791—"is a civic and general

duty." Two years later the Convention issued the famous and stirring proclamation of August 23, 1793: "ARTICLE FIRST. From this moment, until that when the enemy shall have been driven from the territory of the Republic, all the French people are in permanent requisition. ARTICLE SECOND. The young men will go to battle; the married men will forge arms and transport munitions; the women will make tents, uniforms, and will serve in the hospitals; the children will tear old linen into lint; the old men will be led to the public places to inflame the courage of the warriors."

SUBSTITUTION.

The Convention ordered a levy of the whole people, and it was indeed the nation in arms that saved France. But from the year VI onwards a law established an annual military contingent, which was formed by drawing lots and by enrolment. From the following year those who had drawn lots to serve were allowed to find substitutes. It was privilege introduced into the organization of the army; wealth was able to evade military duty. The armies of Napoleon were recruited under this law.

Napoleon vanquished, the Restoration suppressed conscription, but as voluntary engagements furnished only a very small contingent,

it was obliged to restore recruiting by levy as a complementary means.

After 1830 conscription was once more in force; but the faculty of replacement or substitution was still a corrective. The term of service was seven years; but the army was divided into two portions, one alone serving under the colours; the other portion was on furlough and constituted a reserve. Substitution was effected by money payment and under very vexatious conditions; agencies were created, which offered substitutes; and thanks to these agencies exemption from civic duty became a traffic. To put an end to these scandals a fund was created known as the Army Endowment Fund. Young men who wished to escape military service had to pay a certain sum to this fund; the amount was settled each year by the Minister of War. From the receipts of this fund the premium on re-engagement was paid. You may readily guess what were the results of this system. The rich were exempt from military service. The army consisted, apart from a mere handful of engaged volunteers, entirely of poor men or mercenaries.

While France retained this detestable system, Prussia had instituted compulsory military service, and her increasing power was largely

due to this organization. After the Prussian victories over the States of South Germany, the Government of the Emperor Napoleon III intended to reform the French army. But this attempt miscarried in 1868, and the system in force was merely replaced by that of substitution.

The cruel disasters of 1870-71 were a lesson to France. They cost many human lives, a vast sum of money, and two magnificent provinces, in which the memory of France persists after forty years. To avoid the repetition of such disasters the Republic sought to re-create the national army.

Compulsory Service.

In 1872 a military law established universal and compulsory military service. It was decided that every Frenchman should be a soldier from his twentieth to his fortieth year. No more exoneration or substitution.

But this was not yet the reign of equality. By means of lots the contingent was divided into two parts. One served five years in the active army; the other only a year or six months. Dispensations were granted to the supports of families, ecclesiastics, and members of the teaching profession. The term of service was reduced to one year for young men furnished with

certain diplomas if they paid a sum of £60 and enrolled themselves before the lots were drawn. This was conditional or volunteer engagement.

The law of 1889 suppressed the volunteers. It reduced active service to three years. It still excused certain classes of young men, after they had passed a year in barracks, from completing their term of service in time of peace. These dispensations were reserved for the supports of families—that is, the eldest sons of widows, and the eldest brothers of orphans, and for the eldest of families of seven children, and young men designated by the Council of Revision as indispensable to their parents. Other dispensations were granted in the interest of certain studies to the scholars of certain colleges.

Since 1905 these last vestiges of inequality have totally disappeared.

The Present Law (1912).

Active military service has been reduced for all to two years. This measure, intended to lighten and equalize the burden, might have had the defect of weakening the army and impoverishing the supply, but that care was taken to reduce furloughs and to grant advantages to subordinate officers, corporals, and re-engaged soldiers. All dispensations are abolished. Students preparing for the doctorate in law

or medicine are compelled, like all the rest, to serve for two years. Even those who are the support of their families have to pay their debt to their country. But the poor parents may receive, after inquiry, and by the advice of a special council, a relief of 7½d. per day during the service of their children with the colours.

Although Frenchmen need spend only two years in barracks, they are all subject to service from the age of twenty to the age of forty-five —that is, for twenty-five years they remain at the disposal of the military authorities. Only the infirm are excused.

The Active Army.

The active army is composed of soldiers accomplishing their two years of compulsory service. Every year, from the 1st to the 15th January, census tables are drawn up by the municipalities. On these tables are inscribed all those young men who have attained the age of twenty during the year, and who are domiciled in the commune. These young men are then summoned to appear, in the simplest clothing, before a special council, which is known as the council of revision, and which meets at the chief town in the canton; it is presided over by the prefect, and comprises a general, a councillor-general, an arrondissement councillor, and a

councillor of the prefecture. A military surgeon examines the young men, and the council decides whether they are fit for service or whether they should be "adjourned." All those incorporated are afterwards matriculated—that is, inscribed on a special register—when they receive a military *livret*, or memorandum-book, which they must produce whenever required.

Recruits may be drafted to any garrison; in other words, recruiting is not local or territorial, but national; a young man born at Marseilles may be sent, for example, to Dunkirk. Nothing is more natural, since the army is the same for the whole of France.

The recruiting of the reserves and the territorial army is always regional, in view of rapidity of mobilization.

Young men who contract to serve for three years may join before the age of twenty under certain conditions, and those who are students or engaged in some industrial, agricultural, or commercial exploitation may obtain, upon the advice of the council of revision, a postponement of service, renewable in some cases until the age of twenty-five.

A Frenchman more than eighteen and less than thirty-two years of age, who is neither married nor a widower with children, may, on condition that he has never been condemned by the courts,

engage to serve for three, four, or five years. Soldiers who have served their time are free to re-engage, with the consent of the council of their regiments. Re-engagements, having the great advantage of strengthening the staff of under-officers, are encouraged by premiums and by higher pay. The ex-under-officers re-engaged have the right also to pensions in proportion and to civil employments.

National Colleges.

Young men admitted to the entrance examinations in certain national schools—the Normal Superior College, the Central College of Arts and Manufactures, the School of Forestry, the School of Bridges and Highways, and the School of Mines—may receive there a special military training, and are prepared for the grade of sub-lieutenant of reserves. If they pass the necessary examinations for this grade, they need serve only one year as soldiers and may complete their time as officers. Young men admitted to the College of Saint-Cyr or the Polytechnique must themselves pass a year in barracks. All young Frenchmen are subject to this common rule.

Military Education.

In the barracks the soldiers are trained to physical exercises; they learn the part they will

have to play on campaign, on outpost, advance-guard, rearguard, flank, and patrol duty. They are taken over the whole ground, familiarized with their rifles, and accustomed to rapid and accurate fire.

Then, in the company of young men of his own age, the Frenchman begins to comprehend, to use Alfred de Vigny's phrase, all the grandeur that is associated with military servitude. The effort which is demanded of him, the regularity of life imposed, the machinery to which he is bound—all reminds him that he is a part of a whole, a unit in the national collectivity, a living cell of that great organism, his mother country.

Discipline.

Sometimes, perhaps, he will find the discipline a little hard. But on reflection he will accept it cheerfully as the most sacred of civic duties. An army without discipline would be an army ruined. To obey our hierarchical superiors in all they command us to do, for the good of the service and the execution of military rules, is merely to conform with the laws of the nation's life. As citizens and men we remain free; we may well make a temporary sacrifice of a portion of that liberty in the defence of our country.

The Reserve—the Territorial Army.

On leaving the barracks Frenchmen remain for eleven years in the reserve of the active army, for six years in the territorial army, and for six years longer in the reserve of the territorial army. The reservists of the active army are summoned to two periods of training, one of twenty-three days and one of seventeen. The men of the territorial army are convoked only for a period of nine days. The reservists of the territorial army are called out only in the event of war.

Officers.

Officers are appointed by decree of the President of the Republic, countersigned by the Minister of War, according to regulations strictly determined by the law. No one can become a sub-lieutenant in the active army unless he has served two years as under-officer, or unless he has been for two years a student in the College of Saint-Cyr or the Polytechnique, and has passed his examinations upon leaving. Young men who have issued from the ranks and aspire to the grade of sub-lieutenant must have successfully followed the proper courses in the Colleges of Saint-Maixent, Saumur, or Versailles. The promotion of officers is effected in a proportion fixed by the law by choice and by

seniority up to the rank of commandant. For the superior ranks seniority no longer counts; promotion is by merit and military valour. The officers of the reserve and the territorial army are appointed by examination.

The Army Corps.

France is divided into a certain number of army corps, which comprise, as a rule, two divisions (infantry and artillery), a brigade of cavalry, a squadron of artillery transport, and a battalion of engineers; stores of clothing, arms, and ammunition, a special health service, an administrative service called an intendancy and charged with providing all the needs of the army, and accountants or administrative officers. I have already mentioned that at the headquarters of each army corps a Council of War sits as a court.

Colonial Army.

France has colonies in all parts of the world. These colonies are sometimes commercial outlets, sometimes strategical positions. We are obliged to provide for their defence. The colonial troops consist of infantry and marine artillery. Formerly they were recruited both by enlistment and by drawing lots. To-day only those young men are sent to the colonies who consent to serve there, who are at least twenty-one years of age, and

who have already served six months in France. The law favours enlistments by high pay, pensions, and concessions of land.

Colonial troops, formerly attached to the Ministry of Marine, are now dependent upon the Ministry of War.

The Navy.

To defend herself by sea, France has a fleet, which comprises two great squadrons: the North and the Mediterranean Squadrons. These contain numerous types of vessels: battleships, armoured cruisers, cruisers, dispatch-boats, torpedo-boats, submarines.

The crews of the fleet are recruited in part by means of voluntary engagements, in part by means of a special organization known as the *maritime inscription*.

Every Frenchman who follows the sea as a profession is inscribed on a special list. As soon as he has been at sea for eighteen months his inscription, which was provisional, becomes definitive. He is in consequence subjected to five years' active service, must remain for two years at the disposal of the State, and until he is fifty years of age he is in the reserve. In return he is granted very considerable advantages; and by subscribing 3 per cent. of his

pay he may obtain a half-pay pension after twenty-five years at sea, even on private vessels.

The officers of the navy either rise from the ranks or come from the Polytechnique College or the Naval College at Brest.

Fortresses and Military Ports.

Fortified towns and military ports are called, in French, *places of war*. These places are subjected, in the interests of national defence, to particular rules. Thus private properties situated at a certain distance from fortifications are classed by zones, within which it is forbidden to erect buildings and plant hedges, or they must at least be removed at the first demand. In frontier regions, and particularly in the east, the population has to put up with a good many rules of this kind. They know that all individual considerations must give way before the necessities of national security. They have retained a lively memory of the cruel events of 1870. May we never know such a time! But if we have one day to fight for our country, let us show ourselves worthy of her, and ensure, by our patriotism and our courage, the victory of the right!

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