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SPAIN AND PORTUGAL	*José Ots y Capdequi*
JAPAN	*Yusuké Tsurumi*
LEGITIMATION	*See* ILLEGITIMACY
LE GRAND, DANIEL	*Stephen Bauer*
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LEHR, JULIUS	*Max Endres*
LEIB, JOHANN GEORGE	*Kurt Zielenziger*
LEIBNIZ, FREIHERR VON	*Ernst Cassirer*
LEIST, BURKARD WILHELM	*Hans Fehr*
LEISURE	*Ida Craven*
LELEWEL, JOACHIM	*Marceli Handelsman*
LEMIRE, ABBÉ JULES	*Georges Weill*
LEMONNIER, CHARLES and ELISA	*Maxime Leroy*
LENIN, NIKOLAI I.	*See* ULYANOV, VLADIMIR ILYICH
LEO III	*Louis Bréhier*
LEO XIII	*John A. Ryan*
LEO, HEINRICH	*Alfred von Martin*
LEONHARD, RUDOLF KARL GEORG	*Alfred Manigk*

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LEONTYEV, KONSTANTIN NIKOLAYEVICH	*I. V. Dioneo-Shklovsky*
LEOPOLD II	*Stephen H. Roberts*
LE PLAY, PIERRE GUILLAUME FRÉDÉRIC	*Gottfried Salomon*
LEPSIUS, KARL RICHARD	*James Henry Breasted*
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LETELIER, VALENTÍN	*Luis Galdames*
LE TROSNE, GUILLAUME FRANÇOIS	*G. Weulersse*
LETTRE DE CACHET	*See* CACHET, LETTRE DE
LEUBER, BENJAMIN	*Peter K. H. Wessely*
LEVASSEUR, PIERRE ÉMILE	*Henri Hauser*
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LEWIS, SIR GEORGE CORNEWALL	*J. G. Heinberg*
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LI HUNG CHANG	*William James Hail*
LIABILITY	*Roscoe Pound*
LIABILITY INSURANCE	*See* COMPENSATION AND LIABILITY INSURANCE; CASUALTY INSURANCE
LIANG CHI'-CH'AO	*V. K. Ting*
LIBEL AND SLANDER	*Theodore F. T. Plucknett*
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LIBERTY	*Harold J. Laski*
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LIEBERMANN, FELIX	*H. D. Hazeltine*
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LIPTON, SIR THOMAS JOHNSTONE	*Mildred L. Hartsough*
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LITERACY AND ILLITERACY	*Helen Sullivan*
LITERATURE	*Max Lerner* and *Edwin Mims, Jr.*
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LITTRÉ, MAXIMILIEN PAUL ÉMILE	*René Hubert*
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LOCALISM	*See* REGIONALISM
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LOCATION OF INDUSTRY	*Hermann Schumacher*
LOCH, CHARLES STEWART	*Philip Klein*
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LOCKOUT	*See* STRIKES AND LOCKOUTS
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LOISEL, ANTOINE	*Georges Boyer*
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LOMONOSOV, MIKHAIL VASILYEVICH	*Benjamin Ginzburg*
LONGE, FRANCIS DAVY	*Jacob H. Hollander*
LONGFIELD, SAMUEL MOUNTIFORT	*Jacob Viner*
LONGSHOREMEN	*Elmo P. Hohman*
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LÓPEZ DE PALACIOS RUBIOS, JUAN	*Román Riaza*
LORIMER, JAMES	*Felix S. Cohen*
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LOTZE, RUDOLF HERMANN	*Bernhard Groethuysen*
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MACEDONIAN PROBLEM	*See* COMITADJI; NEAR EASTERN PROBLEM
McGEE, THOMAS D'ARCY	*Alexander Brady*
McGEE, WILLIAM JOHN	*Clark Wissler*
MACH, ERNST	*Hugo Dingler*
MACHAJSKI, WACLAW	*Max Nomad*
MACHIAVELLI, NICCOLÒ	*Gaetano Mosca*
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Encyclopaedia of the SOCIAL SCIENCES

LABOULAYE, ÉDOUARD RENÉ LEFEBVRE DE (1811–83), French jurist, historian and political theorist. Laboulaye was born in Paris. His early works on the history of landed property, on the civil and political status of women and on criminal law reflect the influence of the historical school of Savigny. In the Revolution of 1848 he sided with the liberal movement, and after the establishment of the empire he launched a publicist campaign against Napoleonic absolutism. But when Napoleon III appeared to liberalize the empire, Laboulaye ceased to oppose it and even voted for the government in the plebiscite of 1870. This action turned many of his faithful friends against him and provoked disorder among his students at the Collège de France. He served under the republic as deputy and senator, an exponent of the more moderate and conservative tendencies.

Laboulaye's political doctrines are mainly derived from de Tocqueville and Constant. He opposed Caesarism and had a sympathetic appreciation of American institutions. He pointed out the danger to individual liberty and human progress of the concentration of power in the hands of the state, a process which, he held, begins with democratic revolutions and ends inevitably in Caesarism. He was not in principle hostile to the state, which he regarded as the greatest human institution, but he wished to circumscribe its powers for fear of its becoming tyrannical. The limits to state power are prescribed by the liberty of the citizens and by the principles of 1789; but constitutions, those "magnificent inscriptions on the front of a temple" from which God is absent, are not sufficient to assure their observance. A liberal education is necessary in order to enable citizens assiduously to exercise their political rights and to participate in the affairs of the commune, department, church and school. The true foe of political despotism must therefore focus attention on the realities of local self-government; he should not allow himself to be deluded by the idea of popular sovereignty, which reduces itself in practise to intermittent and sporadic acts of voting for governmental representatives and is usually an abdication of the rights of citizenship rather than a true exercise of them.

GUIDO DE RUGGIERO

Works: Juridical: *Histoire du droit de propriété foncière en occident* (Paris 1839); *Recherches sur la condition civile et politique des femmes depuis les romains jusqu'à nos jours* (Paris 1843); *Essai sur les lois criminelles des romains concernant la responsabilité des magistrats* (Paris 1845). Historical: *Histoire politique des États Unis*, 3 vols. (Paris 1855–66, 6th ed. 1876). Politico-social: *Paris en Amérique* (Paris 1863), tr. by M. L. Booth (New York 1863); *La liberté religieuse* (Paris 1858); *Études morales et politiques* (Paris 1862); *L'état et ses limites suivi d'essais politiques sur Alexis de Tocqueville* (Paris 1863); *Le parti libéral* (Paris 1863); *La liberté d'enseignement* (Paris 1880).

Consult: Wallon, H., "Notice sur la vie et les travaux de M. Édouard-René Lefebvre-Laboulaye" in *Nouvelle revue historique de droit français et étranger*, vol. xii (1888) 1–30; Boutmy, Émile, *Taine, Scherer, Laboulaye* (Paris 1901) p. 99–125; Ruggiero, G. de, *Storia del liberalismo europeo* (Bari 1925), tr. by R. G. Collingwood as *History of European Liberalism* (London 1927) p. 197–99.

LABOURERS, STATUTES OF. Statutes of Labourers refers to the series of laws enacted from the fourteenth to the sixteenth century by which the English government attempted to control the wages and conditions of labor. The immediate cause of this legislation was the labor shortage resulting from the Black Death, which ravaged England from 1348 to 1350 and which resulted in the death of 30 to 50 percent of the total population and probably an even larger proportion of the working classes. The plague swept the country during the period of transition from the manorial system to a money economy and added to the general economic dislocation characteristic of a transition era. Wages had been rising for a generation and this rise meant a considerable loss to those landholders who had commuted their villeins' services. With the Black Death rents fell, prices and wages soared and the landholding class protested loudly that it was being ruined by the scarcity of workers and their excessive demands.

In 1349 Parliament was not in session because of the epidemic; in order to meet the situation the King's Council proclaimed the Ordinance of

Labourers. Its purpose was to guarantee a steady and adequate supply of labor at wages prevailing before the plague and also to insure reasonable prices for commodities. It provided that all able bodied men and women under sixty without definite means of support must if requested accept service at wages no higher than the rate of 1347. To pay or to receive higher wages was a punishable offense. Workers were not allowed to leave their employers during the term of their contracts and masters were prohibited from retaining employees who had violated this prohibition. No alms were to be given to the able bodied and reasonable prices were to be charged for food. Penalties for violations included fines, forfeit of the excess received and imprisonment.

The ordinance was followed by the statute of 1351, which was intended to supplement it, to remove its ambiguities and to strengthen its administration. It established definite maximum rates for agricultural laborers, provided that they must remain in the summer in the same locality in which they had lived during the winter and that their contracts of service were to be annual or for the customary term. Specific wages were fixed for certain groups of artisans, while for others the rates customary before the plague were to prevail as to both wages and prices. All workers were to take an official oath of compliance with the statute.

The statute and ordinance were frequently reenacted in the next two centuries and although changes were made in details of wage schedules, administration and penalties, their principal features were retained. The most important innovation among the subsequent acts was contained in the statute of 1390 (13 Richard II, c. 8), which instead of reciting fixed maxima took cognizance of variations in local conditions by calling upon the justices of the peace to make annual assessments of wages "according to the Dearth of Victuals." Under this law maximum wages were established in many instances above the statutory maxima of 1388. The principle of fixed maxima was reiterated, without, however, any specific repeal of the wage assessment clause, in the statutes of 1445 (23 Henry VI, c. 12), 1495 (11 Henry VII, c. 22) and 1515 (6 Henry VIII, c. 3). Under the divers acts wage schedules were fixed in money rates varying in each occupation according to whether or not food, lodging and clothing were included; they also varied with the season of the year. These were intended to be maximum rates but under the current pressure of the demand for labor they probably approximated the lowest wages actually paid. In some of the statutes the minimum number of hours of labor was stipulated and holidays were regulated.

In order to keep workers from migrating to communities where they could obtain better conditions regardless of the law Parliament from time to time tightened the restrictions on freedom of movement; the act of 1388 (12 Richard II, c. 3) provided that no worker could leave his locality or be received in another without the authorization of a letter patent. With the related intention of preventing shifts from lower to higher wage groups provisions were enacted to hinder changes of occupation. By the very nature of the acts combinations of workers to improve their conditions would be legally without status. In addition there was some specific legislation against them: combinations of masons and carpenters were forbidden in 1361 (34 Edw. III, c. 9) and combinations of all workers and of food dealers in 1548 (2 & 3 Edw. VI, c. 15). Although the statutes sometimes lapsed they remained technically binding until 1562, when the Elizabethan Statute of Artificers (5 Eliz., c. 4) set up for the regulation of economic life a new code which synthesized the various principles enunciated in the Statutes of Labourers and adapted them to a somewhat changed situation; this statute affected industrial workers much more than had the earlier laws.

The Elizabethan statute, which for a century was enforced more or less systematically and which was not officially repealed until 1814, was intended to curb economic and social instability by establishing a regular supply of labor in the various occupations, by preventing indigence through compulsory employment and apprenticeship and by restricting the migration of workers. In its provisions for dealing with unemployment and vagrancy, which had developed even in the sixteenth century as a result of the growth of capitalism and the enclosure movement, this act is related to the later Elizabethan poor law. In the interests of steady employment labor contracts with few exceptions were required to run for a year. To offset the enclosure movement a sufficiency of agricultural labor had to be assured; and in addition to the general compulsory labor clauses the statute of 1562 provided for compulsory apprenticeship and compulsory seasonal labor in agriculture. The trade to which a youth was to be apprenticed was determined by his parentage and financial status; these limitations tended to insure an ade-

quate supply of rural workers as well as to fix the general distribution of labor.

The Statute of Artificers, a comprehensive ordering of all the principal relationships between employer and employee, was rendered necessary by the decay of customary and guild regulation. The minimum term of apprenticeship was seven years and could not terminate before the apprentice was twenty-four years old. The wage clause, which reenacted the annual assessment principle of 1389, indicates that the intention of the government was to stabilize wages in a reasonable relation to price rather than to keep them at an absolute low figure.

Any statements concerning the administration of the Statutes of Labourers except for the first ten years after the enactment of the ordinance are highly conjectural, but for that period strenuous efforts were undoubtedly made to enforce them. Their administration was entrusted to local officials and to special commissions appointed for the purpose. From 1349 to March, 1351, there were appointed commissions to enforce both the peace and the ordinance and also separate commissions to enforce the ordinance. The commissions set up between March, 1351, and the end of 1352 were entrusted with the joint task of enforcing the peace and the statutes. An especially strenuous effort at enforcement was made between December, 1352, and 1359, when separate commissions to administer the Statutes of Labourers were established systematically throughout the country. Since many of the justices of laborers also served on the commissions for enforcing the peace, the dual system proved cumbersome; it was abandoned in 1359 and was never revived except for the palatinates. The administration of these statutes thus became part of the task of the justices of the peace; the King's Bench, the Court of Common Pleas and probably the seigniorial courts also had jurisdiction over violations of the statutes.

At first the excesses and later both the fines and excesses collected as penalties under the ordinance and acts were used upon the insistence of Parliament in aid of the king's subsidy on the theory that the violations affected the ability of the landholders to pay the tax. After 1354 the crown recovered its right to all the money penalties; but in 1357 it yielded fines to the lords who were entitled to them under their charters. The salaries of the justices of laborers were derived from the money penalties and varied with the number of sittings. Sometimes additional sums were given to those with an unusually large number of convictions to their credit. Most of the justices were members of the middle class and thus besides their direct pecuniary interest they had a general interest as members of the employing and taxpaying class in the zealous enforcement of the labor law.

During the first ten years cases were presented under all the clauses, but the fact that the number of presentments for the receipt of excess wages and prices was far greater than the total for all other offenses indicates that the justices of the peace and the justices of laborers concentrated chiefly upon keeping wages and prices low. In the King's Bench and Court of Common Pleas the cases involved almost exclusively questions of contract; excess charges were determined more easily in the local courts and probably for this reason did not come to the upper courts, but indirectly the enforcement of the contract clause had the desired effect of keeping down wage rates and prices. While the justices in the local courts concerned themselves definitely with punishing offending laborers—there were very few convictions of employers—the central courts tried to enforce the law against both classes. Fines and excesses were the most commonly inflicted penalties, and in the cases of illegal wages the former were generally of the same amount as the excesses. The enforcement of the statutes after 1359 was spasmodic rather than continuous and in the fifteenth and still more in the sixteenth century their administration was evidently ineffectual.

The supposition that the statutes were instrumental in destroying villeinage is without foundation, for they gave the lord a preferential right to the services of his villeins and the right to reclaim them from another master if he needed their labor; the obligation to serve a lord was regarded also as a sufficient excuse in actions against laborers for refusal to serve. The manorial lords were thus given the additional instruments of the king's courts to aid in the recapture of fugitive villeins, for which the manorial courts had become inadequate. The statutes were thus to some degree an obstacle to the break up of the manorial system which other factors were helping to effect.

The question of the extent to which the statutes achieved their purpose is still subject to discussion. Wages and prices certainly rose, ultimately to 50 percent above the 1347 level; and the constant complaints of employers, the amounts of the penalties and the number of cases under the statutes as well as their frequent

reenactment with added penalties and new provisions indicate that they fell far short of success. Nevertheless, the periods of strict enforcement must surely have retarded increases in wage rates, particularly among agricultural laborers, and probably in general kept them from rising as high as they would have risen otherwise. From time to time economic pressure forced rises in the statutory maxima themselves; and between about 1445 and 1560, a period of rising prices, the attempt to restrict wages to the maxima of the statutes was frustrated even in the courts. The wage schedules fixed by the justices in some of the towns were above those prescribed by law, for economic competition in the towns probably made even the official recognition of obsolete rates impossible.

In their general spirit and in their specific provisions the Statutes of Labourers presented few innovations and on the whole were entirely consistent with mediaeval economic practise. The establishment of maximum wages by the municipalities and the guilds had been customary since the thirteenth century, so that it was the regulatory authority rather than regulation itself which was new. Nor was economic intervention by the central government without precedent; there had been the Assize of Bread, of Ale and of Cloth. The first two had been administered only by local authorities but the last had been entrusted to alnagers, who like the justices of laborers were national officials appointed to carry out special economic measures. The significance of the statutes in the history of labor legislation is that they represented the first attempt on the part of the national government to regulate the labor conditions throughout the country and that they dealt a blow to free labor by restricting for the first time its freedom of movement. They went beyond any local legislation moreover in fixing the wages of agricultural laborers, which had formerly been subject only to custom.

Intended to protect the consumer in a time of crisis, they nevertheless in their provisions, interpretation and administration reflect the interests of the Parliament of landholders which enacted them. They were administered by members of the same class for the benefit of that class and when rigidly enforced caused much hardship to the worker. They penalized him in that his wages were definitely fixed at obsolete figures while the prices of provision had only to be reasonable; the definite price restrictions on the products of the artificers involved an additional burden upon those who produced them. Whatever small measure of economic stability was achieved by the statutes was certainly at the cost of the laborer, whose status was lowered at a time when economic forces were conspiring to raise it.

FLORENCE MISHNUN

See: BLACK DEATH; LABOR LEGISLATION AND LAW; LABOR CONTRACT; VAGRANCY; ENTICEMENT OF EMPLOYEES; APPRENTICESHIP; POOR LAWS.

Consult: Lipson, Ephraim, *An Introduction to the Economic History of England*, 3 vols. (4th ed. London 1926–31) vol. i, p. 96–100; Stone, Gilbert, *A History of Labour* (London 1921) p. 55–56, 90–110; Petit-Dutaillis, Charles, and Lefebvre, Georges, *Studies and Notes Supplementary to Stubbs' Constitutional History* (tr. from the French, Manchester 1930) p. 264–71; Holdsworth, W. S., *A History of English Law*, 9 vols. (3rd ed. London 1922–26) vol. ii, p. 459–64, vol. iv, p. 379–87, 390–94; Putnam, B. H., *The Enforcement of the Statutes of Labourers, 1349–1359*, Columbia University, Studies in History, Economics and Public Law, no. 32 (New York 1908), and "Northamptonshire Wage Assessments of 1560 and 1667" in *Economic History Review*, vol. i (1927–28) 124–34; Tawney, R. H., "The Assessment of Wages in England by the Justices of the Peace" in *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, vol. xi (1913) 307–37 and 533–64, esp. 307–26; Levett, A. E., and Ballard, A., *The Black Death on the Estates of the See of Winchester*, Oxford Studies in Social and Legal History, vol. v, no. 9 (Oxford 1916) p. 101–04.

LABRA Y CADRANA, RAFAÉL MARIA DE (1841–1919), Spanish statesman, jurist and publicist. Labra was born in Cuba but passed most of his life in Spain. He was a consistent liberal. As writer, educator and parliamentarian he fought in the republican ranks and maintained his democratic convictions unswervingly without falling into the excesses of extreme radicalism. His efforts on behalf of the modernization of Spain have a twofold aspect. First, he sought the country's internal regeneration through education. His liberal ideas proved an obstacle to his appointment to the chair of colonization at the University of Madrid, to which he was entitled by his great knowledge of colonial affairs and of public international law. However, with F. Giner de los Ríos and other illustrious professors who were dismissed from the university because of their liberalism Labra founded the Institución Libre de Enseñanza; in this school, which was destined to play a leading part in the development of Spanish culture, he was at first professor of public international law and then of contemporary political history. He furthered the cause of popular education in the Ateneo de Madrid, where he delivered numerous lectures and of which he was president from 1914 to

1919. In his writings in the field of education he discussed among other things the role of the state. Labra also sought the modernization of Spain with respect to its external affairs. His birth in Havana and the associations of his family with Cuba account for his lifelong interest in colonial questions; for many years he sat in the Cortes for the Antilles. He was very instrumental in bringing about the abolition of Negro slavery in the colonies and fought for ample autonomy for the Antilles as the guaranty of their retention and as an aid to liberalism in the peninsula. Upon the loss of the colonies he accentuated his propaganda on behalf of Ibero-American unity. He may justly be called the father of this movement for close political, juridical, economic and intellectual cooperation with Portugal and Latin America, which, he held, was favored by a common cultural background, by the role Spanish emigrants played in many of the countries under consideration and by other more incidental opportunities, such as the disruption of trade relations caused by the World War. He considered this cooperation necessary because modern conditions made a policy of isolation impossible for a nation and because Spain was entitled, as a result of its history, geographic position, language, social conditions and intellectual advancement, to participate actively in the settlement of international questions. The most important of Labra's voluminous writings are thus those which deal with the history and prospects of the colonial and Ibero-American questions.

JOSÉ OTS Y CAPDEQUI

Important works: *Política y sistemas coloniales*, 2 vols. (Madrid 1876); *Discursos políticos, académicos y forenses, 2. serie* (Madrid 1886); *La autonomía colonial en España* (Madrid 1892); *Cuestiones palpitantes de política, derecho y administración* (Madrid 1897); *Estudios de derecho público* (Madrid 1900); *La reforma política de ultramar* (Madrid 1901); *El problema hispano-americano* (Madrid 1906); *La constitución de Cádiz de 1812* (Madrid 1907); *España y América: 1812–1912* (Madrid 1912); *La política colonial y la revolución española de 1868* (Madrid 1916).

Consult: *El poder de las ideas* (Madrid 1916); Ortiz Fernandez, F., *La reconquista de América* (Paris 1910) p. 57–63.

LABRIOLA, ANTONIO (1843–1904), Italian socialist philosopher. Labriola was professor at the University of Rome from 1874 until his death. Like Socrates he had a passion for oral teaching and conversation, through which he spread a large number of ideas of which only a fraction appears in his essays, addresses, letters and books. Passing from the influence of Hegel through that of Herbart to that of Marx but always rebelling against enclosing himself within any one system of ideas, he affirmed historical materialism as a pragmatic philosophy and as a theory of the progressive growth of society. He regarded this philosophy as involving a monistic outlook because it is a unified whole of theory and practise and overcomes the abstractions of the theory of historical factors. He sought in economics a guide through history, which he understood as a record of human labor, of the pertinent social relations and of the changes in its forms, which are always social. The movement of history is "from work, which is knowledge in operation, to knowledge as abstract theory"; in history "man develops or produces himself, is at once cause and effect, both author and consequence of definite conditions, in which are engendered also definite currents of ideas . . . beliefs . . . expectations" (ideologies).

Human reality represents a continuous development and a series of rebirths always conditioned by preexisting reality. Men having created for themselves an artificial (social) environment and having gradually modified it create the conditions of their own development and modification. There is a dialectic of history or a self-criticism of things; but the "things" are expressions of social activity. There is no predetermination; progress is not fated. Men themselves must produce the future, and in the process there are always possible regressions, deviations and error. The existence of conditioning factors makes utopias irrelevant. Prevision is possible only as it concerns social forms or morphology and then only through the critical approach of historical materialism. Critical communism is an illustration of this type of analysis. It foresees communism as a "suggestion of a new world being generated" and thus implies a proletarian revolution. Condemning "that which history has already condemned," he based on the progressing socialization of production and the developing proletarian solidarity his prevision of the socialization of the means of production which will abolish the "causes of unjustice or the domination of man over man," which will effect cooperation and integral development and which through the increasing productivity of labor will bring about the humanization of all men. Sorel regarded Labriola's essays as a landmark in the history of socialism. As the first professor of philosophy in a European university to expound historical materialism Labriola raised

the prestige of revolutionary socialism in intellectual circles. In addition his emphasis on the practical and activistic implications of the doctrine helped make Marxist views more acceptable to the syndicalists of the Latin countries.

RODOLFO MONDOLFO

Important works: *La dottrina di Socrate, secondo Senofonte, Platone ed Aristotile* (Naples 1871; new ed. by Benedetto Croce, Bari 1909); *Morale e religione* (Naples 1873); *Della libertà morale* (Naples 1873); *Dell'insegnamento della storia* (Rome 1876); *Scritti varii di filosofia e di politica*, collected by Benedetto Croce (Bari 1906). His *Saggi intorno alla concezione materialistica della storia* is composed of four volumes: *In memoria del manifesto dei communisti* (Rome 1895, 3rd ed. 1902); *Del materialismo storico* (Rome 1896, 2nd ed. 1902); *Discorrendo di socialismo e di filosofia* (Rome 1898, 2nd ed. 1902); *Da un secolo all'altro*, ed. by L. Dal Pane (Bologna 1925). *In memoria . . .* and *Del materialismo . . .*, tr. by C. H. Kerr as *Essays on the Materialistic Conception of History* (Chicago 1904), and *Discorrendo . . .*, tr. by E. Untermann as *Socialism and Philosophy* (Chicago 1907). Labriola's letters to Engels were published in part by L. Dal Pane in *Nuova rivista storica*, vol. xi (1927) 371–76, 613–16, and vol. xii (1928) 198–203, and in part in Russian translation by D. Ryazanov in *Pod znamenem marxizma* (1924) no. 1, p. 41–80.

Consult: Torre, A., "Le idee filosofiche di Antonio Labriola" in *Rivista italiana di sociologia*, vol. x (1906) 278–93; Fiorilli, C., in *Nuova antologia*, 5th ser., vol. cxxii (1906) 59–63; Orano, P., *I moderni*, 5 vols. (Milan 1914–26) vol. ii, p. 1–53; Croce, Benedetto, "Note sulla letteratura . . ." in *Critica*, vol. v (1907) 417–35; Diambrini-Palazzi, S., *Il pensiero filosofico di Antonio Labriola* (Bologna 1923); Mondolfo, R., *La filosofia politica in Italia nel secolo XIX* (Padua 1924) p. 76–82; Ryazanov, D., "K pis'mam Labriola" in *Pod znamenem marxizma* (1924) no. 1, p. 35–40; Dal Pane, L., "La teoria dell'epigenesi nel pensiero di Antonio Labriola" in *Critica sociale*, vol. xxxv (1925) 109–12, and a polemic with Corrado Barbagallo on "La prevedibilità storica secondo Marx e Antonio Labriola" in *Nuova rivista storica*, vol. x (1926) 586–89, and vol. xi (1927) 617–20; Vorländer, K., *Kant und Marx* (2nd ed. Tübingen 1926); Untermann, E., "Antonio Labriola and Joseph Dietzgen" in his translation of Labriola's *Discorrendo . . .*, p. 223–60.

LACOMBE, PAUL (1834–1919), French historian and social philosopher. Influenced by Comte and John Stuart Mill, Lacombe was led to an appreciation of the importance of the social factors in the development of history. In his principal work, *De l'histoire considérée comme science* (Paris 1894, 2nd ed. 1930), he undertook to show how the ambition of the philosophers of history may be realized on a scientific basis. He maintained that institutions are more important than events and that the role of the former in the social sciences is similar to that of repetition and similarity in the natural sciences. The concept of the institution was bound up in his mind with the notion of a "general man" as opposed to the temporary and individual man. His plan to make a systematic study of the different categories of the institutional was accomplished only in fragments (*Introduction à l'histoire littéraire*, Paris 1898; *La guerre et l'homme*, Paris 1900; *L'appropriation du sol*, Paris 1912), but he succeeded in rounding out his theoretical work by a criticism of Taine's ideas (*La psychologie des individus et des sociétés chez Taine*, Paris 1906; *Taine, historien et sociologue*, Paris 1909). Although he relapsed for a while into the "event" point of view (*La première commune révolutionaire de Paris et des assemblées nationales*, Paris 1911), he soon saw his mistake and reverted to the "science" of history. The notes he left for the second edition of his great work bear witness to an understanding of the importance of the social and of ideas in historical explanation, a view closely resembling that of historical synthesis. Greatly concerned with the practical, he wrote considerably on political and economic organization and on the problems of education.

Lacombe's importance lies in the fact that he stressed the concept of the institution in the study of history. Although he formulated this notion in a vague fashion, it led him to see the connection between history and sociology. Lacombe should also be credited with having taken account of the importance of the economic factor although he probably exaggerated it, a point which he illustrated with some interesting contributions to the study of *Homo faber*.

HENRI BERR

Consult: Berr, Henri, "Paul Lacombe, l'homme et l'oeuvre" in *Revue de synthèse historique*, vol. xxx (1920) 97–143; *La sociologie*, comp. by D. Essertier, Philosophes et savants français du XX^e siècle, vol. v (Paris 1930) p. 386–94.

LACORDAIRE, JEAN BAPTISTE HENRI DOMINIQUE (1802–61), French preacher and liberal Catholic leader. Lacordaire was originally educated for the law but was converted to a religious career by reading Lamennais' *Essai sur l'indifférence* (1817–23). At the time of his ordination in 1827 he became Lamennais' ardent disciple; he joined with him in the editorship of the short lived *Avenir*, and although formally bowing to the papal condemnation which suppressed the paper he never abandoned the essentials of the liberal Catholic position. With Montalembert and other friends he toiled for years in a vain endeavor to bring the mass of his

fellow Catholics to this point of view. He hailed the new order which the events of 1848 seemed to usher in and welcomed the second French Republic, but Napoleon III's restoration of the imperial system and its whole hearted acceptance by the leaders of the church drove him out of public life. He spent the remaining ten years of his career as principal of a small secondary school belonging to the Dominican order, whose reestablishment in France had been one of his great ambitions.

Lacordaire will be remembered primarily as one of the little band who endeavored vainly to reconcile the doctrines and policy of Catholicism with those of modern political liberalism. Against those Catholics who demanded for the church in France a freedom from state interference, especially in matters of education, which the Napoleonic concordat and the Restoration settlement denied it but who refused to allow equal freedom to non-Catholic individuals and groups he maintained that Christianity has no need for absolute power; for truth, however persecuted, has always triumphed over error, however protected and powerful. The church must, in other words, be prepared to grant the freedom it claims. In terms of concrete policy this involved a cleavage between the church and the authoritarian political parties, which had hitherto been its chief supporters, and the recognition of liberty as the basic principle of society—neither of which the church was prepared to accept.

ROGER SOLTAU

Works: *Oeuvres complètes*, 9 vols. (new ed. Paris 1872–73); *Political and Social Philosophy of Lacordaire*, ed. by D. O'Mahony (London 1924); *Thoughts and Teachings of Lacordaire* (new ed. London 1911).

Consult: Foisset, J. T., *Vie du R. P. Lacordaire*, 2 vols. (2nd ed. Paris 1873); Chocarne, B., *Le R. P. H. D. Lacordaire, . . . sa vie intime et religieuse*, 2 vols. (4th ed. Paris 1873), English translation ed. by J. A. Aylward (London 1867); Montalembert, C. F. de T. de, *Le père Lacordaire* (2nd ed. Paris 1862); Haussonville, G. P. O. d', *Lacordaire* (4th ed. Paris 1911); Favre, Julien, *Lacordaire, orateur* (Fribourg 1906); Gurian, Waldemar, *Die politischen und sozialen Ideen des französischen Katholizismus, 1789-1914* (M.-Gladbach 1929).

LADD, GEORGE TRUMBULL (1842–1921), American psychologist. Ladd was educated for the ministry, receiving degrees in divinity from Andover Theological Seminary and Western Reserve University. After serving as Congregational minister for ten years he transferred his interests to philosophy and later to psychology. In psychology his importance lies in the hospitality he showed to the doctrines of experimental psychology as newly expounded in Germany by Wundt. Along with G. Stanley Hall and William James he may be regarded as a pioneer in the movement which established psychology as a scientific experimental discipline in the United States and which after a generation gave a place of leadership to American psychologists.

While professor of philosophy at Yale he published his *Elements of Physiological Psychology* (New York 1887), a work which marked the first attempt in English to present the results of the "new" psychology. The fact that Ladd came to psychology by way of theology and philosophy makes the scope and adequacy of this pioneering compilation a tribute to his skill and devotion as well as to his liberality of view. In those days a scientific psychology was feared as an encroachment upon the moralistic prestige and integrity of the "soul" in the hierarchy of human endowment. The championship of the newer movement by a representative of orthodox philosophy served to quiet this fear and supported the efforts of Hall and James to give psychology a status independent of philosophy. Ladd revised the *Elements* in 1911 in association with R. S. Woodworth, bringing the subject to an authoritative presentation for that time.

It was at Ladd's instigation that Scripture was appointed professor of psychology at Yale in 1892, founding there one of the early and productive psychological laboratories.

Ladd's catholicity of interest appears in the wide range of his more than thirty volumes, particularly in his writings on oriental subjects. He lectured in Japan and in India. His sympathetic understanding of the Japanese led to the erection in 1922 of a monument in his honor at a Buddhist temple in Tokyo.

JOSEPH JASTROW

Important works: *Philosophy of Knowledge* (New York 1897); *Essays on the Higher Education* (New York 1899); *Philosophy of Conduct* (New York 1902); *The Philosophy of Religion*, 2 vols. (New York 1905); *In Korea with Marquis Ito* (New York 1908).

Consult: Armstrong, A. C., in *Philosophical Review*, vol. xxx (1921) 639–40; Boring, Edwin G., *A History of Experimental Psychology* (New York 1929) p. 511–15; Pillsbury, Walter Bowers, *The History of Psychology* (New York 1929) p. 245–46.

LADD, WILLIAM (1778–1841), American pacifist and philanthropist. Ladd contributed significantly to both the organization and the theory of the early American peace movement.

After a career as a sea captain and a financially disastrous experiment with free labor in Florida, which he had hoped would lead to the peaceful abolition of slavery, he devoted his efforts to the cause of international peace, giving his fortune and his health to the cause and dying literally a martyr to it. He founded new peace societies, edited periodicals and devoted a forceful pen and a persuasive voice to propaganda. His contributions to the technique of pacifism lay in his development of the use of the petition and the delegation to legislative and executive officers; in his practical plans for enlisting the aid of press and pulpit and of women as well as men; and in his unification of the scattered peace societies into a national organization, the American Peace Society, in 1828.

Although he was a deeply religious man, Ladd's pacifism was more constructive and realistic than that of his predecessors in the nineteenth century peace movement. His book, *An Essay on a Congress of Nations* (London 1840; reprinted with introduction by James B. Scott, New York 1916), proposed a concrete and systematic plan for international organization. Not only did this plan influence many writers on the subject but its most important features were realized in the Hague conferences, the World Court and the League of Nations. It involved the establishment of a periodic congress of nations for formulating international law and for guiding and administering the general welfare of nations and an independent but correlated permanent international court for the settlement of differences by diplomatic arbitration or by judicial decision. It was original and essentially American in emphasizing the separation of powers and judicial supremacy as well as reliance on public opinion rather than force to make its decisions effective. It represented a sharp departure from most previous plans of the sort in that it was intended primarily to establish peace and not to preserve the status quo or to guarantee the stability of thrones; it proposed a league of nations, not of sovereigns.

MERLE E. CURTI

Consult: Hemmenway, John, *The Apostle of Peace, Memoir of William Ladd* (Boston 1872); Curti, M. E., *The American Peace Crusade 1815–1860*, vol. i– (Durham, N. C. 1929–); Call, A. D., *Advocate of Peace*, vol. lxxxix (1927) 608–11, with exhaustive bibliography.

LAFARGUE, PAUL (1842–1911), French socialist. Lafargue, who was born in Cuba, studied in Paris during the Second Empire. First a republican, he later became a disciple of Proudhon and a collaborator on Longuet's *Rive gauche*. He went to London to complete his medical studies and became associated with Karl Marx, whose youngest daughter, Laura, he married. Lafargue served as secretary for Spain in the general council of the First International. He sympathized with the Paris Commune and upon its defeat fled to Spain, where he was active in the socialists' struggle against Bakuninist anarchism. After the amnesty of 1880 he returned to France and became with Jules Guesde one of the principal figures in the socialist renaissance in France and a founder of the *Parti ouvrier français*. Lafargue was the best propagandist in France of the theories of Marx and Engels, both through the translation with his wife's collaboration of their works and through his own studies in economics, history and philosophy. In addition he was an able pamphleteer and contributed many important articles to *Égalité*, *Revue socialiste*, *Citoyen*, *Cri du peuple*, *Petite république*, *Petit sou*, *Socialiste*, *Ère nouvelle*, *Devenir social*, *Humanité* and *Neue Zeit*. In 1883 he and Guesde with the aid of Marx wrote *Le programme du parti ouvrier*. Lafargue participated in the congresses of the Labor party, the later United Socialist party and in those of the Second International. He was imprisoned both in 1883 and in 1891 for his revolutionary activity. Lafargue had considerable influence on the social democracy of Germany and Russia, and Lenin frequently referred to his works. He and his wife committed suicide, feeling they had outlived their usefulness.

BORIS SOUVARINE

Important works: *La propriété; origine et évolution* (Paris 1895); *Les trusts américains* (Paris 1903); *Le déterminisme économique de Karl Marx* (Paris 1909); *Le droit à la paresse* (Paris 1883); *Cours d'économie sociale* (1884); *La religion du capital* (Paris 1887), English translation (London 1894); *Le communisme et l'évolution économique* (Lille 1892; 3rd ed., n.p. 1892); *Programme agricole du parti ouvrier français* (Lille 1894); *Idéalisme et matérialisme dans la conception de l'histoire* (n.p. 1895), controversy with Jaurès; *La fonction économique de la bourse* (Paris 1897); *Le socialisme et les intellectuels* (Paris 1900), tr. by C. H. Kerr (Chicago 1900); *Le socialisme et la conquête des pouvoirs publics* (Lille 1899); *La question de la femme* (Paris 1904); *Causes de la croyance en Dieu* (Paris 1905); *La charité chrétienne* (Paris 1905); *La méthode historique de Karl Marx* (Paris 1907); *Le patriotisme de la bourgeoisie* (Paris 1906).

Consult: Vérecque, Charles, *Dictionnaire du socialisme* (Paris 1911) p. 232–37; Ryazanov, D., preface to his Russian edition of Lafargue's *Sochineniya*, vol. i– (Moscow 1925–).

LAFAYETTE, MARQUIS DE, MARIE-JOSEPH-PAUL YVES-ROCH-GILBERT DU MOTIER, (1757–1834), French military and political leader. Lafayette distinguished himself by his military exploits in the continental army of the United States, notably in his campaigns against Cornwallis in Virginia in 1781. But his chief importance was as a liaison between the French and American armies and governments. Having acquired a reputation as a champion of liberty he became a leader of the liberal cause in France, opposing restrictions on trade—particularly with America—and advocating Negro emancipation and popular representation in government. At the beginning of the French Revolution he championed reform and was largely responsible for the Declaration of Rights in 1789. His preservation of order as commandant of the Paris National Guard won him enthusiastic middle class support and the half hearted confidence of the king. Until 1791 he was the dominant figure in French politics. Soon, however, Louis began to distrust him and to engage in counter-revolutionary activities. At the same time Lafayette began to lose his popularity with the revolutionary forces by insisting that the royal prerogative must not be further diminished. In the Paris mayoralty campaign of 1791 he was defeated. When war was declared against Austria in 1792, Lafayette, although holding a military command at the front, vehemently attacked the Girondin antimonarchical policy and upon the suspension of the king was obliged to desert. Returning to France after seven years of German prison and exile, he discreetly but openly opposed Bonaparte, whose rule he considered antiliberal. In retirement at Chateau Lagrange he engaged in scientific agriculture, particularly in sheep breeding. During the Hundred Days he was elected to the Chamber and moved the resolutions demanding Napoleon's abdication. Under the Restoration he engaged in intrigues not merely against the Bourbons—both in the Chamber and secretly—but also on behalf of Greek, Spanish, Latin American, Polish, Belgian and Italian revolutionaries. In the revolution of 1830 he was chosen leader of the popular party at the Hôtel de Ville, but being liberal monarchist rather than republican he yielded to Orleanist persuasion and accepted Louis Philippe with a revised charter. He soon became dissatisfied with the bourgeois monarchy and died a leader of the opposition.

LOUIS GOTTSCHALK

Consult: Jackson, S. W., *LaFayette, a Bibliography* (New York 1930); *Mémoires, correspondance et manuscrits du général Lafayette*, ed. by F. de Corcelle, 6 vols. (Paris 1837–38); Doniol, Henri, *Histoire de la participation de la France à l'établissement des États Unis d'Amérique*, 5 vols. and supplement (Paris 1886–99); Tower, Charlemagne, *The Marquis de La Fayette in the American Revolution*, 2 vols. (2nd ed. Philadelphia 1901); Charavay, Étienne, *Le général La Fayette (1757–1834)* (Paris 1898).

LAFERRIÈRE, ÉDOUARD LOUIS JULIEN (1841–1901), French jurist. The son of a prominent authority on administrative law, Laferrière began the practise of law in 1864 in Paris. He entered the Conseil d'État at the beginning of the Third Republic; in 1879 he became president of the judicial section (*section du contentieux*) and in 1886 vice president of the Conseil d'État, acting in fact as president, since the latter title was reserved to the minister of justice. Appointed in 1898 governor general of Algeria, he introduced or prepared several important political and economic reforms. He was procurator general at the Court of Cassation in 1900–01.

Laferrière exercised considerable influence on the evolution and progress of French administrative law, which is in large measure judge made, by both his activity in the supreme administrative tribunal and his masterly *Traité de la juridiction administrative et des recours contentieux* (2 vols., Paris 1887–88; 2nd ed. 1895). This work, which was the result of a course of lectures delivered in 1883 before the Faculté de Droit de Paris, marks an important event in the history of French administrative law. Instead of expounding the detail of the regulations or of their application in practise he attempted for the first time to discover the principles which at that time and largely under his influence inspired the jurisprudence of the Conseil d'État and to make of them a scientific synthesis.

Some of the ideas advocated by Laferrière have been fully accepted; for example, the residual jurisdictional authority of the Conseil d'État in administrative lawsuits and the specificness of the rules concerning the responsibility of the administration. Others have been discarded —the division of administrative acts into acts of authority or public power sovereign in character and acts of management, the irresponsibility of the state on the occasion of the exercise of the public power—while certain of his ideas have been widely attacked, such as the independence of the active administration with regard even to the administrative tribunals.

CHARLES EISENMANN

LAFFEMAS, BARTHÉLEMY DE (1545–*c.* 1611), French economic and social reformer. Laffemas was born in Dauphiné of a family of impoverished Calvinist nobility. Having adopted the vocation of *tailleur* he was engaged sometime around 1566 by Henry of Navarre, whose continued favor after his coronation as Henry IV of France gave Laffemas an opportunity to become a prosperous merchant. The commercial experience Laffemas thus gained inspired him to write a number of tracts, twenty-three in all, sketching a program for the economic and social reform of the nation. Although these reveal their author's lack of scientific training, their basis in direct observation gives them a decidedly practical quality and often results in striking ingenuity in matters of detail. In opposition to the agrarian doctrines of his friend Sully, Laffemas upheld an industrialist policy. He assumed that the quantity of gold and silver, provided it was in active circulation, was an infallible index of a nation's wealth. But the drain of money into other countries was to be prevented, according to his view, not by prohibiting its exportation but by stimulating the manufacture of more and better goods to the point where foreign nations would be forced to buy in France. In his program for the reorganization of national industry were included the development of the cultivation of the mulberry tree with a view to increasing silk production, the creation of new factories, bans upon the export of raw material and the extension of government protection to industry. On its social side Laffemas' plan envisaged the creation of an autonomous industrial class which should have high powers to control the laboring energy of the nation in the interests of industrial aggrandizement. He proposed toward this end the strict enforcement of the edict of 1581, which had expanded the system of *jurandes*; the establishment of bureaus of manufactures in each diocese endowed with police jurisdiction and the right to settle industrial conflicts; and the creation of workhouses for habitual idlers. Henry IV manifested respect for Laffemas' ideas by appointing him controller general of commerce in 1602 and so far followed his advice as to reissue the edict of 1581 in 1597 and to found a council of commerce and manufactures in 1601. In spite of these measures Laffemas' social program was doomed to oblivion because it conflicted with the royal conception of centralization. The economic and mercantilistic aspects of his system also failed to produce a significant effect at the time. But in their essentials they were later revived by Montchrétien and eventually translated into legal fact by Colbert.

PAUL HARSIN

Consult: Cole, C. W., *French Mercantilist Doctrine before Colbert* (New York 1931) ch. ii; Hayem, Fernand, *Un tailleur d'Henri IV: Barthélemy de Laffemas* (Paris 1905), which lists Laffemas' tracts; Laffitte, P., "Notice sur B. Laffemas" in *Journal des économistes*, vol. xlii (1876) 181–218; Hauser, Henri, "Le système social de Barthélemy de Laffemas" in *Revue bourguignonne*, vol. xii (1902) 113–31, and "La liberté du commerce et la liberté du travail sous Henri IV" in *Revue historique*, vol. lxxx (1902) 257–300; Fagniez, G., *Économie sociale de la France sous Henri IV* (Paris 1897), especially p. 88–134; Levasseur, Émile, *Histoire des classes ouvrières et de l'industrie en France avant 1789*, 2 vols. (2nd ed. Paris 1900–01), especially vol. ii, p. 153–67.

LAFITAU, JOSEPH-FRANÇOIS (1681–1746), Jesuit missionary and ethnologist. From 1712 to 1717 Lafitau was stationed at the Iroquois mission of Sault Saint Louis, now Caughnawága. His chief work, *Moeurs des sauvages ameriquains, comparées aux moeurs des premiers temps* (2 vols., Paris 1724), is one of the best and fullest first hand studies available on the magico-religious, political and domestic culture of the Iroquois and Hurons; it contains orderly and objective descriptions by a sympathetic, informed and balanced observer. Lafitau formulated and applied principles which have since become basic in ethnology. Primitive cultures, he insisted, should be judged in the light of the conditions under which they operate rather than in terms of European cultures. The resemblances between cultures or traits found among different peoples or in different periods may be generic or specific; he believed that only from specific identities can genetic relationship be inferred. Contemporary primitive cultures throw light upon the cultures of ancient peoples and vice versa. Lafitau's own applications of these principles are usually reserved and sober, although not always correct. Recognition of Lafitau's contribution to comparative ethnology came in 1913 from van Gennep and Wilhelm Schmidt.

JOHN M. COOPER

Consult: Rochemonteix, C. de, *Les jésuites et la Nouvelle-France au XVII^e siècle*, 3 vols. (Paris 1895–96) vol. iii, p. 384–86; McLennan, J. F., *Studies in Ancient History* (new ed. London 1886) p. 305–09; Gennep, A. van, "Contributions à l'histoire de la méthode ethnographique" in *Revue de l'histoire des religions*, vol. lxvii (1913) 320–38; Pinard de la Boullaye, H., *L'étude comparée des religions*, 2 vols. (3rd rev. ed. Paris 1929) p. 196–98.

LA FOLLETTE, ROBERT MARION (1855–1925), American statesman. La Follette was born in the region of agrarian discontent which has been a perennial ferment in American political life, and he became its outstanding spokesman. Early egalitarian beliefs deriving from rural pioneer life were intensified by the moralistic and oratorical education he received at Wisconsin's frontier university, and factors in his intimate environment—the early death of his father, a tyrannical stepfather, an imperious elder brother, a long struggle against near poverty—cast him permanently in the mold of agitator and critic. He served as governor of his state from 1900 to 1906 and from 1906 until his death as United States senator. Although a member of the Republican party throughout his career he was not in the confidence of party leaders, and Wisconsin Republicanism under him was a pronounced heresy from the viewpoint of the national organization. The rift between him and the Republican leadership widened steadily after 1908, leading eventually to his independent candidacy for the office of president in 1924. In this campaign he temporarily united agriculture and labor in an energetic protest against the conservative policies of the two major parties, receiving the support of such widely divergent organizations as the agricultural Non-Partisan League, the American Federation of Labor and the Socialist party.

His major political ideas, the democratization of electoral devices and the control of industry by government, were the fruition of this heritage. They represented Populist faith in the wisdom of the people tempered by a zeal for knowledge and expertness in public office. His struggle for the regulation of capital and industry embodied, however, none of the seductive nostrums of the radical agrarianism of his time. He led in the development of the direct primary and championed the initiative, referendum and recall. He worked out a plan for regulation of "big business" based on appointive commissions with wide regulative authority, actual valuation as a rate base for public utilities, a sharply graduated income tax, government monopoly of the banking system and the prohibition of trusts and monopolies by legislative fiat. His attitude toward trusts and monopolies revealed, even as late as 1924 when he ran for the presidency on an independent ticket, that he had not bridged the gap between the hopes of an agrarian democracy and the facts of an industrial society. His chief work was to transform Wisconsin into a political laboratory for advanced measures and to devise such national legislation as the Seaman's Act and the provision for railroad valuation as a basis for the fixing of rates.

In political method La Follette was productive and ingenious. As substitutes for party organization and the legislative caucus he used weapons either long in desuetude or as yet undeveloped. The most significant of these were a direct and continuous appeal to the electorate upon questions of policy, the executive message and veto to compel legislative agreement, the invention of the "roll call on men and measures"—in which he read the records of public officials to their constituents from his campaign rostrums—and, in the United States Senate, the development of the concept of the legislative tribune as a forum for public criticism. As a minority voice exposing to public attention the informal and hidden processes of government he added clarity and substance to political discussion. Essentially a realist in politics, La Follette used many familiar devices of politicians, developing in his struggle for control of Wisconsin a powerful political machine which he used skilfully throughout his career.

WALLACE S. SAYRE

Works: *La Follette's Autobiography: a Personal Narrative of Political Experiences* (Madison 1913); *The Political Philosophy of Robert M. La Follette*, compiled by Ellen Torelle and others (Madison 1920).

Consult: Barton, A. O., *La Follette's Winning of Wisconsin (1894–1904)* (Madison 1922); Lovestone, Jay, *The La Follette Illusion* (Chicago 1924).

LAFONTAINE, SIR LOUIS HIPPOLYTE (1807–64), French Canadian statesman. From 1830 to 1837 LaFontaine was a member of the assembly of Lower Canada. He supported the demand for self-government in a legal manner and opposed the rebellion of 1837. From 1841 to 1851 he was the acknowledged leader of the French Canadian Reformers in the assembly of the United Province of Canada. He determined to avoid the suppression of French Canadian nationality contemplated by the union of Upper and Lower Canada in 1841, and with Robert Baldwin he led a ministry in 1842–43 and another from 1848 to 1851, each of which contributed to the establishment of the principle of responsible cabinet government for colonies. In 1849 he introduced and carried a bill designed to compensate the French Canadians for undeserved losses in the rebellion. The Tories made the measure a question of loyalty; but if

the governor general had refused his assent or if the British government had disallowed the bill, the theory on which the ministry had taken office would have proved farcical and meaningless. Through the fierce legislative debates, through the subsequent rioting and through the discussions in England LaFontaine stood firm. The bill passed into law and thus vindicated forever the Baldwin-LaFontaine theory of colonial government. From 1853 to 1864 LaFontaine was chief justice of Lower Canada. As a legislator and as a judge he earned respect for his contributions to the development of French Canadian law and for his study of its history.

W. P. M. KENNEDY

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LAFUENTE Y ZAMALLOA, MODESTO (1806–66), Spanish historian and publicist. Lafuente prepared for an ecclesiastical career but was never ordained. He joined the advanced liberals, or *progresistas*, whose views he propounded in his journals *Fray Gerundio* (1837–44) and *Revista europea* (1848–49), publishing biting satires against everything he considered reactionary in politics and custom and winning enormous but ephemeral popularity. Lafuente's great work is his monumental history of Spain, which he carried to the death of Ferdinand VII in 1833; it was continued by Valera, Borrego and Pirala to the death of Alfonso XII in 1885 and later by Coroleu and Maura Gamazo to 1902. Writing from the standpoint of moderate liberalism Lafuente managed generally to preserve a tone of impartiality, although he did insert subjective appraisals together with rather pompous paragraphs. The broadening of concepts, the opening of new fields of study and other changes in historiography have antiquated the work in some respects; it is largely political in content, its sections dealing with primitive and Moslem Spain are now of little use and many of its statements regarding other periods require partial correction. On the whole, however, his history, preeminent in its breadth of treatment and solidity of content, its conscientious and judicious examination of sources and its literary qualities, has not yet been equaled and its discussions of modern and contemporary periods are far from obsolete. It is still the most widely read history of Spain.

JOSÉ DELEITO Y PIÑUELA

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LAG, CULTURAL. *See* CHANGE, SOCIAL

LAGARDE, PAUL DE (1827–91), German orientalist and publicist. Lagarde, whose original name was Bötticher, was the son of a Berlin school teacher. He studied theology, taught in various secondary schools and in 1869 became professor of oriental languages at the University of Göttingen.

In addition to his work as an orientalist Lagarde took an active part as a publicist in the discussion of current political and national problems. The concept of German nationalism as developed in his *Deutsche Schriften* (2 vols., Göttingen 1878–81; new ed. by K. A. and Paul Fischer with title *Schriften für das deutsche Volk*, 2 vols., Munich 1924) has considerably influenced the German nationalist currents of the late nineteenth and the early twentieth century and has been incorporated to a great extent in the ideology of the National Socialist movement, in the youth movement of Germany and in some of the educational reform movements. An admirer of Jacob Grimm and F. Rückert, Lagarde was steeped in romanticism and adopted its individualistic-aristocratic outlook and its glorification of the past. He wished to restore the religion and national spirit of the Germans by a return to the old indigenous sources. The historical development of Germany—with its reception of Roman law, its Protestant revolt, Enlightenment, emancipation of the Jews, liberalism, plutocracy, urbanization, parliamentarism and party struggles—Lagarde considered as a process of de-Germanization. Culture and education have replaced religion, and sectarian divisions have taken the place of national religious unity. As Paul and Augustine were destroyers of the true Christian, so were Luther, Hegel and Bismarck destroyers of the true German spirit. Mass education in secondary schools and the universal

quest for a liberal education through indiscriminate assimilation of subject matter, which is unorganic and hence un-German, has brought about the standardization of individualities.

The reconstruction of Germany, Lagarde held, can take place only through the return to the genuinely Christian, old German piety and morals. In the sphere of religion his reform program meant the elimination of all Semitic and Roman elements and the formation of a national German religion, a doctrine later propagated by Ludendorff and the National Socialists. Demanding that politics be made thoroughly ethical he struggled against Bismarck and sought to cultivate the heroic virtues and to ground society in the army, the people and the professions rather than in the intelligentsia. He urged the replacement of parliament by a chamber of specialists and advocated eastern colonization, reagrarianization and the regeneration of the conservatives. His educational aims were based also on Fichte's romantic concept that the essence of the German was something entirely individual and original and that this individuality was eternal and divine. In order that this individuality may be developed uniformity, authoritarianism, compulsory public education and worship of the state must disappear and schools must be made organic; in other words, religious and vocational.

HERMANN PLATZ

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LAINÉ, ARMAND (1841–1908), French jurist. Lainé was unquestionably one of the creators of modern private international law. He was the first incumbent of the chair devoted to the subject at the University of Paris, where he taught from 1881 to 1908. Lainé's chief work is the *Introduction au droit international privé* (2 vols., Paris 1888–92), a historical study of the conflict of laws from the fourteenth to the eighteenth century which remains unexcelled to the present day. Of his many special studies the most celebrated, *La théorie du renvoi en droit international* (Paris 1909), is devoted to the famous theory of *renvoi*, which he steadfastly opposed. He believed that only confusion would arise from taking into consideration the rules of the conflicts of laws in a foreign country when the law of the forum prescribed the application of foreign law. In the light of history he demonstrated further the optional character of the rule *locus regit actum* and made a profound study of the rules of the *Code civil* relating to the conflict of laws (*Étude critique d'un projet de convention concernant la solution des conflits de lois*, Paris 1902). In his general doctrine Lainé is to be associated with the school of Savigny. His greatest contribution was his liberation and clarification of a subject which he taught with apostolic fervor at a time when it was generally neglected. With Renault, Lainé was one of the most influential delegates to the conferences on private international law at The Hague.

J. P. NIBOYET

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LAISSEZ FAIRE. Any attempt to write a historical account of the doctrine of laissez faire would involve traversing the history of orthodox economic theories, at least from the time of the French physiocrats to the middle of the nineteenth century. For classical economic theory, as it developed especially in Great Britain under the influence of Adam Smith, is with respect to the province of government based on the underlying assumption of laissez faire, that the economic affairs of society will in the main take care of themselves if neither the state nor any other body armed with coercive authority attempts to interfere with their working as determined by the individual actions of men. This assumption depends in turn on an optimistic view of the nature of the universe and on the conception of a "natural order" or system of economic harmonies which will prevail and work out to mankind's advantage in the absence of positive regulation.

It is impossible in a brief space to give more than a very general indication of the stages by which this doctrine rose for a time to a position of almost undisputed prominence among economic writers. Although the idea of laissez faire can be traced back to the earlier Italian economists, as, for example, Serra in the seventeenth century, the maxim itself—*laissez faire, laissez*

passer—derives from eighteenth century France and has been commonly attributed to Gournay, at first a merchant and later one of the intendants of commerce and a friend of Turgot. Turgot, however, in his *Éloge de Vincent de Gournay*, ascribes the phrase *laissez nous faire* to another merchant, Legendre, who is said to have used it in impressing upon Colbert the desire on the part of the mercantile community for non-interference by the state. The expression laissez faire has been sometimes ascribed also to d'Argenson. But it seems clear that Gournay even if he did not originate it amplified and popularized it in the longer form, *laissez faire, laissez passer*; and in the latter part of the eighteenth century it became in varying form a common expression among the physiocratic writers and those akin to them in thought. Adam Smith adopted from the physiocrats the underlying idea, although not the phrase, which did not become widely current in England until J. S. Mill used it in the title of one of the sections of his *Principles of Political Economy* (1848). Since then it has come to be identified most closely with the doctrines of the Manchester school in England, especially with the opposition to extended state intervention in industry through such measures as factory acts or acts regulating wages, and also in the sphere of commercial policy with free trade. The word Cobdenism is often used in England as practically equivalent to laissez faire.

In its immediate setting the doctrine of laissez faire as formulated by the physiocrats was primarily a protest against the vexatious system of regulations encompassing industry instituted by Colbert in the previous century; but in a deeper sense it was the outcome of the view that inasmuch as manufacture and commerce are unproductive of wealth and only serve as means of distributing it they should be left to take their own course free from taxation—which should be levied only on the productive forces of the land. This arrangement seemed to the physiocrats to accord with the dictates of the natural order, a concept which Adam Smith developed into the clearly formulated doctrine of a natural harmony under which the individual in pursuing his own economic interests mysteriously furthers the interests of the whole. This doctrine was closely connected in Smith's mind with the assumption that money coming into the hands of the state by way of taxation is likely to be spent unproductively and not in such a way as to further economic enterprise. It is significant that Smith's treatment of the problem of taxation and public debt takes no account of the possibility admitted by even the most individualistic of modern economic writers that money in the hands of the state may be put to productive use. Obsessed by the vision of a mounting national debt and by a dread of the restrictive tendencies of state intervention in his own day, he failed to realize the possibility of productive state expenditure.

According to Smith's highly individualistic economic theory the source of wealth for the nation lies in the efforts made by individuals in their use of the factors of production—land, labor and capital—at their disposal and in their success in producing utilities under the inducement of a prospect of economic reward. Despite the fact that in the case of certain individuals this pursuit may be unenlightened, it is nevertheless axiomatic, according to Smith, that individuals acting independently are likely to be better judges than any collective body as to the means of producing the maximum amount of wealth. Collective management, except in industries that can be reduced to a simple and fixed routine, is deplored by Smith as conducive to sluggishness and lack of enterprise; hence his distrust of the joint stock company as a form of industrial organization. The individual, on the other hand, in pursuit of his own gain will strive to produce as much utility as possible and whether as employer or as workman will be driven by competition to do this as a condition of survival and success in business. The sum of the efforts of all the individuals to create the greatest possible amount of wealth will result, if they are allowed to follow their own bents, in the creation of the maximum wealth in society as a whole. This will happen because of the existence of a natural order, in which the interests of the individuals are harmonized with the good of society; and interference with the free working of this natural order although it may be justified in exceptional cases on non-economic grounds, as in the case of the navigation laws, is bound to diminish the total amount of wealth produced. Thus all forms of state intervention for the purpose of regulating commerce so as to produce either an influx of the precious metals or a "favorable balance of trade" are bound to diminish the total wealth of the world by diverting trade from the channels along which it would "naturally" flow into others which individuals, left to their own devices, would reject as less productive.

This conception of a natural order and a natural harmony, based on what human nature will

cause men to do if they are left alone, pervades and underlies not only Adam Smith's writings but those of all the classical economists of the late eighteenth and the early nineteenth century. It received moreover a powerful philosophic reenforcement from the teaching of the utilitarians. For the doctrine which erects pleasure as the end of human action and makes each man the only competent judge of his own pleasure fits in exactly with the notion that each man is the best judge of his own economic interest. Man pursues his economic interest as a means to pleasure; and as pleasure is regarded as quantitative and the pleasure of society is merely the sum of the individual pleasures of its members, that course which furthers most these individual pleasures must lead to the creating of the maximum of social utility. Benthamism was to be turned to very different uses at a later stage; but in the England of the early nineteenth century it became the powerful philosophic ally of laissez faire doctrines in the economic field. The economic good of society became, like the pleasure or happiness of society, simply the sum of the goods accruing to the individual members of society.

Adam Smith and his successors up to J. S. Mill based the theory of value mainly upon a consideration of the forces and factors of production. Value is conceived of as determined by the quantity of labor or of labor, capital and land embodied in a commodity or by the money cost of producing it—its "price of production," in Mill's phrase. This view of the value creating process placed the emphasis on the rewards meted out to the factors of production, which are regarded as inducements to produce as much as possible. These rewards, however, consist fundamentally not in money but in the goods which money will buy; and from the time of Stanley Jevons the emphasis of the theory of value shifts from the side of production or supply to that of demand. Jevons repudiated Adam Smith's distinction between "value in use" and "value in exchange" and measured the value of goods not by the cost of production or the amount of labor incorporated in them but primarily by their "utility"; i.e. their capacity to yield pleasure or satisfaction to the consumer. Production thus came to be thought of as a response to the economic stimulus of consumers' demand, and consumers' demand as an inducement to the producer to supply those goods which will yield the maximum total of satisfaction.

Under the new theories of value formulated in England by Jevons and on the continent primarily by the Austrian school of Menger, Wieser and Böhm-Bawerk the doctrine of laissez faire acquired a new sanction. Free consumers' demand regarded as the force governing supply in the absence of artificial restrictions was treated as the guaranty of maximum production of wealth and satisfaction; and state intervention came to be looked on as bad because it interfered with the free expression of consumers' demand by altering the conditions of supply and price. It is in these terms, vitally different from those of Smith or Ricardo, that the doctrine of laissez faire is at present justified, if at all. Emphasis is put no longer on the self-interest of each producer as making for the maximum production of economic values but rather on the assurance given by the free play of consumers' demand that the production of goods and services will be such as to create the maximum total of human satisfaction.

Economists who now hold laissez faire doctrines state the case mainly on this ground, urging the necessity for allowing free play to consumers' demand as a means to securing maximum utility in preference to attempts by the state or any other body, such as a combine, to fix or influence the prices of commodities or of services, such as labor. Only in popular economics does the argument that each purchaser by seeking his own advantage is most likely to promote the advantage of society as a whole still play any considerable part. In popular economics this argument is still prevalent, but it would be difficult to find much sanction for it in modern economic theory.

The conception of the "order of nature" and the "natural economic harmony," so dear to Bastiat and the free traders of the mid-nineteenth century, thus assumes a new form. But it remains essentially Benthamite or rather utilitarian. For its basis now is the view that the consumer is the best judge of his own satisfactions and that these are measured under conditions of laissez faire by the prices which he is prepared to offer for the various goods offered for sale. Bentham's calculus of pleasures as well as his doctrine that "pushpin is as good as poetry" finds economic expression in the price offers of the consuming public. Satisfaction is measured simply by price; or at all events economics is concerned only with satisfactions that can be measured in those terms.

As Marshall and many other economists have

pointed out, however, the case for laissez faire presented in this form cannot stand examination. For the consumers' price offers depend not only on the amount of satisfaction expected from what they buy but also on the size of their incomes. If incomes are unequal it cannot be said that equal price offers represent measurements of equal satisfaction; and there is no reason to suppose that a system which relies exclusively on the free play of consumers' demand will result in the maximum total satisfaction. Bentham's other principle, the greatest happiness of the greatest number, can be successfully invoked against any such deduction. For the greatest happiness might be promoted by a different distribution of wealth resulting in a quite different series of price offers by the consumers.

Thus in one of its aspects the case for laissez faire breaks down; and the utilitarian principle becomes an argument for state intervention designed to lessen the inequalities of income in order to promote the maximum of satisfaction. This constitutes the argument against laissez faire as regards state regulation of wages through minimum wage legislation and the use of taxation to bring about a redistribution of incomes. Moreover the same Benthamite argument of greatest happiness provides a case for factory and similar legislation designed to remove the causes of unhappiness which arise out of a system of "free" contract between employer and employed.

But it can still be argued that even if the state ought in the interest of the greatest happiness of the greatest number to interfere with the distribution of incomes, it ought not to interfere with the pricing of commodities; since each consumer is the best judge of what he wants, and given a satisfactory distribution of income the free play of consumers' demand will lead to the production of the maximum utility. Almost no one, however, would push this principle to the extreme point; for it will be agreed that the state can reasonably tax certain kinds of luxuries, especially those, such as alcoholic liquors, which are harmful if consumed to excess, and may provide or insure the possession of certain commodities, such as water, at a specially low price when it desires for social reasons to increase the consumption of them. Nevertheless, such instances may be regarded as exceptional and it may be held that by and large consumers' demand should be given free play in order that its price demands may stimulate the maximum production of satisfactions. In the international field this supposition is at the root of the familiar case for free trade. Tariffs, it is argued, constitute an arbitrary interference with the free play of consumers' demand and tend for this reason to reduce the total of satisfactions. Free trade is indeed a logical corollary to the doctrine which makes consumers' demand the final arbiter of prices and production.

This view of the working of the price system is hardly consistent, however, with modern economic conditions. Price fixing under a system of increasing combination among producers has become more and more a function of production rather than of demand. The producer must indeed work within conditions set by consumers' demand; but the demand instead of fixing the price determines only what quantities can be sold at any given price level. The producers more and more fix the prices, either directly or by adjusting the quantity of goods placed on the market. They can of course do this only where some degree of formal or informal combination exists among them; but such combination has become so common as to be the rule rather than the exception.

The laissez faire doctrine was originally opposed not only to state intervention but also to combination designed to influence prices on the ground that this too must tend to decrease the total utility produced. But the efforts of its advocates to prevent combination through antitrust legislation and by regulation of monopolies have either failed or resulted in a negation of laissez faire by calling for extensive intervention on the part of the state. Combination among producers cannot be prevented but at most only regulated. Preventive measures fail, and regulative measures result in an abandonment of laissez faire. Combination has therefore to be accepted by modern advocates of laissez faire as part of the system of private enterprise; and laissez faire comes to mean not the absence of combination but the fullest freedom of action for it. The price system if not regulated by the state comes to be regulated not by consumers' demand as a single force but by the producers acting within the limits set by consumers' demand. But prices fixed in this way can no longer be regarded as part of the order of nature or as having an inherent tendency to promote the maximum satisfaction.

At this point also the case for laissez faire breaks down in face of the transformation of the modern capitalist system from unregulated to regulated production. The tendency in modern

industry is not only toward a tariff policy based on conceptions of economic nationalism but also toward the building up both nationally and across national frontiers of large industrial units strong enough to exert a considerable measure of control over prices and output—thereby creating a new case for state intervention. The German cartel system and the measures taken by the state to control cartel prices furnish a good example of this tendency. The large scale organization and the necessity for state control which it involves lead in the direction of socialism; and the opponents of socialism, unable to rest the case for laissez faire on the old ground of consumers' freedom, are inclined to slip back to the older contention that laissez faire leads to efficiency in production and is the only means of providing producers with a sufficient incentive to do their best. Emphasis is no longer thrown on the pre-established harmony which causes the pursuit by each individual of his own self-interest to result in the well being of all; but it is argued that unless each man is left free to profit by his own exertions, free from state interference, there will be no incentive strong enough to stimulate an adequate development of the world's productive resources. This argument is most commonly advanced against socialism; that is, against any system under which industry would be publicly owned and conducted without recourse to the profit incentive. But it is also often used as a reason for keeping at a minimum state interference with privately run industry and against any heavy taxation of profits for the purpose of redistributing incomes.

But in effect under conditions of large scale industrialism, especially in the older countries, the actual conduct of productive enterprise passes more and more into the hands of salaried managers and the incentive of profit operates directly not upon the productive process but rather upon the investment of capital. The case for laissez faire thus comes to be largely a case for stimulating investment by allowing an adequate profit incentive to the stockholder or shareholder. Stated thus it provokes the socialist answer that if capital belonged to the community and the process of investment were accordingly socialized the incentive of profit would become unnecessary. The advocates of private enterprise and laissez faire retort that under such conditions only a dead level of mediocrity would at best be secured and that both the rewards of enterprise and the penalties of laziness and inefficiency are indispensable if production is to be carried on properly. To this the socialist replies that a communal system would appeal to new motives of service and create a new corporate spirit in favor of doing one's best, which would be more than sufficient to replace the dying incentives of pecuniary gain and fear of unemployment.

The argument thus often becomes at this point an argument about human nature. But it is at bottom a question not so much of human nature as of the forms of organization and control that are appropriate to the technical powers of production available for man's use. The doctrine of laissez faire grew up and flourished in the nineteenth century, first, as a reaction against old systems of state and guild regulation that had become obstructive and oppressive as a result of the changing methods of production; and, secondly, as the outcome of a feeling that these powers would be most rapidly and thoroughly developed if individuals were left as free as possible to make use of them. The sufferings provoked by this unleashing of capitalist enterprise speedily led to the development of a new system of state regulation through factory acts and the like as well as to the growth of social legislation designed to correct in some degree the inequalities of income. But for some time these new forms of state interference remained external to the actual conduct of industry, merely laying down conditions to which private enterprise had to conform.

In the latter part of the nineteenth century, however, private enterprise underwent a radical change as a result of the advance of the new technical revolution. The growth in the scale of business organization was weakening the economic power of the consumer, whereas the growth of democracy was adding to his political power. This situation led inevitably to a demand that political power should be applied to positive economic ends—which was precisely what the advocates of laissez faire had been above all else concerned to deny. Cobden and Bright of course wanted to use the power of democracy for economic ends; but they thought of these ends as negative and not positive, as the removal of hindrances to the free working of the economic system and not as the assumption of control over it by the political power. But in practise this limitation could not be sustained when once economic power became organized and appeared no longer as a natural force but as a conscious control by the organizers of production. Modern large scale industrialism irretrievably destroyed

the theoretical basis of laissez faire doctrine as well as its political practicability.

But laissez faire, discounted as a doctrine and unworkable as a policy in any modern state, has still a powerful following. Except among socialists it is retained as a major premise, however many exceptions may be admitted; and each exception has to be justified by positive arguments against a strong body of opinion that even today regards state intervention in industry as in some sense "unnatural" and undesirable on a priori grounds. Nor is this surprising; for laissez faire established itself firmly as the basis of nineteenth century industrialism, and all the forces of economic conservatism are therefore now ranged on its side, as they were once on the side of the old regulative system which the physiocrats, Adam Smith and Bentham set out to discredit and destroy. Theoretically bankrupt, because the very forms of modern industrial organization are a denial of its first premises, it still fights everywhere a vigorous rearguard action. Its prestige and vitality, however, were seriously undermined by the World War, which caused a great increase both in the degree and extent of combination among producers and in the amount of state regulation of industry and left behind it a situation which compelled states to perpetuate their interference; moreover by promoting the growth of nationalism the war fostered the conception of a national industry closely linked up with the national state. This conception is as prominent in the national idea of Fascism in Italy as in Russian Communism; and it is at the back of the many projects of national planning which, largely under Russian influence, are now being put forward all over the world.

The separation between economics and politics, on which the doctrine of laissez faire rested, is an anachronism in the present day world. The use of political power for economic ends is universal; and although this does not settle the question whether socialism or capitalism is the better system it does make it impossible to rest the case for capitalism on the doctrine of laissez faire. For laissez faire is essentially a doctrine of individualism and free competition. But capitalism cannot be individualistic today and has long ceased to extol unregulated competition as an ideal. As a prejudice laissez faire survives and still wields great power; as a doctrine deserving of theoretical respect it is dead.

G. D. H. COLE

See: INTRODUCTION, section on THE RISE OF LIBERALISM; ECONOMICS: UTILITARIANISM; LIBERALISM; INDIVIDUALISM; CAPITALISM; COMPETITION; FREE TRADE; FREEDOM OF CONTRACT; CONTROL, SOCIAL; GOVERNMENT REGULATION OF INDUSTRY; COLLECTIVISM; NATIONAL ECONOMIC PLANNING; COMBINATIONS, INDUSTRIAL; MONOPOLY.

Consult: Oncken, A., *Die Maxime laissez faire et laissez passer, ihr Ursprung, ihr Werden*, Berner Beiträge zur Geschichte der Nationalökonomie, no. ii (Berne 1886); Hasbach, W., *Die allgemeinen philosophischen Grundlagen der von François Quesnay und Adam Smith begründeten politischen Ökonomie* (Leipsic 1890), and *Untersuchungen über Adam Smith und die Entwicklung der politischen Ökonomie* (Leipsic 1891); Bauer, S., "Origine utopique et métaphorique de la théorie du 'laissez faire' et de l'équilibre naturel" in *Revue d'économie politique*, vol. xlv (1931) 1589–1602; Larkin, P., *Property in the Eighteenth Century with Special Reference to England and Locke* (Dublin 1930); Weulersse, G., *Le mouvement physiocratique en France (de 1756 à 1770)*, 2 vols. (Paris 1910), and *Les physiocrates* (Paris 1931); Veblen, T., "The Preconceptions of Economic Science" in his *The Place of Science in Modern Civilization* (New York 1919) p. 82–179; Clark, J. M., "Adam Smith" in Becker, C. L., Clark, J. M., and Dodd, W. E., *Spirit of '76 and Other Essays* (Washington 1927) p. 59–98; Viner, J., "Adam Smith and Laissez-faire," and Palyi, M., "The Introduction of Adam Smith on the Continent" in Clark, J. M., and others, *Adam Smith 1776–1926* (Chicago 1928) chs. v and vii; Lourié, B., *Das Verhältnis der Manchester-Richtung zur klassischen Nationalökonomie* (Berne 1924); Hertz, G. B., *The Manchester Politician 1750–1912* (London 1912); Hasek, C. W., *The Introduction of Adam Smith's Doctrines into Germany*, Columbia University, Studies in History, Economics and Public Law, no. 261 (New York 1925); Cahnmann, W., *Der oekonomische Pessimismus und das Ricardosche System* (Halberstadt 1929); Keynes, J. M., *The End of Laissez-Faire* (London 1926); Ritchie, D. G., *The Principles of State Interference* (3rd ed. London 1902); Hobson, J. A., *Free-thought in the Social Sciences* (London 1926) pt. ii; Parsons, Talcott, "Wants and Activities in Marshall," and "Economics and Sociology, Marshall in Relation to the Thought of His Time" in *Quarterly Journal of Economics*, vol. xlvi (1931–32) 101–40, 316–47; Jevons, W. S., *The State in Relation to Labour* (4th ed. by F. W. Hirst, London 1910); Veblen, T., *The Theory of Business Enterprise* (New York 1904); Tawney, R. H., *The Acquisitive Society* (New York 1920); Webb, S. and B., *The Decay of Capitalist Civilization* (London 1923); Commons, J. R., *The Legal Foundations of Capitalism* (New York 1924); Clark, J. M., *Social Control of Business* (Chicago 1926); Meakin, W., *The New Industrial Revolution* (London 1928); Spann, O., *Tote und lebendige Wissenschaft* (2nd ed. Jena 1925); Mises, L. von, *Kritik des Interventionismus* (Jena 1929); Soule, G. H., *A Planned Society* (New York 1932); Chase, Stuart, *A New Deal* (New York 1932) chs. ii–iii.

LAJPAT RAI, LALA (1865–1928), Indian nationalist and social reformer. Lajpat Rai studied law at Lahore and practised in the Punjab before he entered politics. He was deported in 1907 for

preaching dominion status for India. From 1914 to 1919 he lived in America. From 1919 until 1928 he was editor of the *People*, a Lahore weekly. He died as a result of a stroke following a clash with police at a demonstration.

Despairing of English liberalism as a way to national liberation and stimulated by the example of Japan, the younger generation of middle class Indian intellectuals early in the twentieth century began to stress complaints against the moral and economic aspects of British domination. Lajpat Rai belonged to the group which raised the banner of the new nationalism. In the Indian National Congress of 1905 he preached the will to assert; Indians were to become "arbiters of their own destiny." He advocated swadeshi, the development of Indian industry, social reform and the popular and Indianized education. The national genius of India was to blossom in its own right after decades of domination by foreign educational ideals. This nationalism had a strong religious tinge. Looking toward the people, their past, their beliefs and sufferings, Lajpat Rai became a leader of the Arya Samaj, which founded an educational system saturated with the spirit of the *Vedas* and the *Upanishads*. As candidate of the New Nationalism party ("Extremists") for the presidency of the Indian National Congress in 1907 Lajpat Rai was defeated by the moderates. His party seceded from the Congress, rejoining it only after the end of the World War when Lajpat Rai became president of the Extraordinary Session at Calcutta in September, 1920. In his later years he supported the Gandhist movement.

HANS KOHN

Important works: *The Arya Samaj* (London 1915); *Young India: an Interpretation and a History of the Nationalist Movement from Within* (New York 1916, 2nd ed. 1917); *England's Debt to India* (New York 1917); *The Political Future of India* (New York 1919); *The Evolution of Japan and Other Papers* (Calcutta 1918); *The Problem of National Education in India* (London 1920); *The Agony of the Punjab* (Madras 1920); *India's Will to Freedom* (Madras 1921); *Unhappy India* (Calcutta 1928, rev. ed. 1928).

Consult: Gupta, N., "Lala Lajpat Rai" in *Modern Review*, vol. xliv (1928) 735–40; *Lala Lajpat Rai: a Sketch of His Life and Career* (Madras 1920).

LAMARCK, CHEVALIER DE, JEAN BAPTISTE DE MONET (1744–1829), French naturalist. Originally trained as a botanist, Lamarck was appointed late in life to the chair of invertebrate zoology established in connection with the reorganization of the national Museum of Natural History during the French Revolution. To this vast and uncharted field, which he had never before studied, Lamarck devoted himself with great enthusiasm, publishing as a result of his researches a number of systematic works on invertebrate animals and an evolutionary account of the origin of biological forms.

Until about 1799 Lamarck believed in the fixity of species. He was converted to the conception of evolution by the force of two ideas involving, first, a perception of the continuity of all forms of life; and, second, an appreciation of the tremendous historical changes which had taken place in the physical environment of plant and animal life. The sense of morphological continuity made him view the various invertebrate organisms as representing progressive simplifications or degradations of the complex mammalian type and also made him look for a junction point between the plant and animal series. On the other hand, his recognition of the historical changes in the natural environment, coupled with the realization that all the conditions necessary for the carrying on of life are already present in the most simple and undifferentiated organisms, led him to inquire whether the morphological continuity of forms was not seconded by a historical continuity, or actual evolution of the complex forms from a primitive monad through the stimulus of the environment. Lamarck felt that it would be absurd to attribute to the physical environment any direct transforming action on the forms of species, but he insisted that great changes in environment necessarily result in changes in the needs of the organisms and that these changes in needs translate themselves into changes of behavior. Thus, Lamarck contended, certain parts or organs are exercised more and others less, with the result that structural changes become fixed in the adult organism by a process of organic habit which he likened to but regarded as distinct from ordinary psychological habit. This process Lamarck designated as the first law of the evolution of species, the law of use and disuse. With it he joined a necessary second law, that the results of use and disuse when long continued and shared by both sexes are inherited and passed on cumulatively.

Lamarck's theories did not receive acceptance during his lifetime, largely because of the opposition of Cuvier, who used his influence to discredit them in favor of his own doctrine of the immutability of species and successive new creations after repeated geological catastrophes. Their importance was recognized only after Darwin had converted the scientific world to a

belief in evolution by his own theory, which put its main emphasis on natural selection but which also took into consideration Lamarckian factors. Weismann's polemic against the inheritance of acquired characters and his attempt to purify Darwinism into a simple doctrine of natural selection had the paradoxical result of provoking a return to Lamarck on the part of many scientists; these continue to accept the Lamarckian doctrine despite the lack of definite evidence to prove or to disprove its central thesis.

In its bearing on sociology the Lamarckian theory has sometimes been interpreted inaccurately as implying the inheritance of mental training. A closer connection between Lamarckianism and sociological theory has often been asserted by idealistic philosophers in the parallel which they draw between Lamarckian biological evolution and mental or cultural evolution: in both cases, they hold, development takes place not mechanistically but through an immanent force solicited by external circumstances.

BENJAMIN GINZBURG

Important works: *Système des animaux sans vertèbres* (Paris 1801); *Histoire naturelle des animaux sans vertèbres*, 7 vols. (Paris 1815–22; new ed. by G. H. Deshayes and H. Milne-Edwards, 11 vols., 1835–45), partial translation as *An Epitome of Lamarck's Arrangement of Testaceae* (London 1823); *Philosophie zoologique* (Paris 1809; new ed. with introduction by C. Martins, 2 vols., 1873), tr. by H. Elliot (London 1914); *Système analytique des connaissances positives de l'homme* (Paris 1820).

Consult: Landrieu, Marcel, *Lamarck, le fondateur du transformisme*, Société Zoologique de France, Mémoires, 1908, vol. xxi (Paris 1909), containing a complete bibliography both of Lamarck's writings and works about him; Packard, A. S., *Lamarck, the Founder of Evolution* (New York 1901); Perrier, Edmond, *Lamarck* (Paris 1925); Rádl, Emmanuel, *Geschichte der biologischen Theorien in der Neuzeit*, 2 vols. (Leipsic 1905–09; vol. i, 2nd ed. 1913), tr. by E. J. Hatfield (London 1930); Le Roy, É., *L'exigence idéaliste et le fait de l'évolution* (Paris 1927).

LAMARTINE, ALPHONSE MARIE LOUIS DE PRAT DE (1790–1869), French poet and statesman. Lamartine came of a wealthy, noble, royalist and Catholic family. He first achieved fame with the publication of his *Méditations poétiques* (Paris 1820; new ed., 2 vols., 1922), which gained him immediate recognition as a great romantic poet. Without entirely deserting his muse he became intensely interested in public affairs and in 1833 was elected to parliament as a "broad and moderate royalist." He refused to identify himself with any party in the Chamber and, as he said, sat "on the ceiling" and spoke "through the windows" to the nation without. France was amazed and captivated by the idealistic and sentimental orations with which the poet in politics "caressed the ears" of his auditors. A violent opponent of the government of Louis Philippe, he became more and more democratic as he became more and more popular. In 1847 he published his famous *Histoire des girondins* (8 vols. Paris, 4th ed. 4 vols. 1848; tr. by H. T. Ryde, 3 vols., London 1847–48), the title of which is belied by the author's egregious disregard of scholarship but which as an eloquent pamphlet glorifying the Girondins as the true champions of the ideas of the French Revolution created such a furor that it became an important factor in the situation leading to the February Revolution of 1848. When that event occurred, Lamartine became a member of the Provisional Government and the leading representative of the bourgeois republicans. The emergence of the practical problems of establishing a new government and of meeting the crisis brought on by the uprising of the working men during the June days accomplished the speedy ruin of the popular orator. As candidate for president of the Second Republic in 1848 Lamartine received no more than a few thousand votes.

Lamartine's significance as a public man lies mainly in the fact that he typified the idealistic, liberal bourgeois of 1848. His views are to be found chiefly in his pamphlet *Politique rationelle* (Paris 1831; English translation 2nd ed. London 1848) and in a collection of his speeches in parliament, *La France parlementaire* (6 vols., Paris 1864–65). He advocated policies that would result in "moral equality and human dignity." These included political democracy, a free press, universal education and separation of church and state. The last policy he favored not from an anticlerical standpoint, but because he shared the view held by Lamennais, whom he resembled in his general Christian democratic outlook, that the church could better pursue its divine mission when freed from political entanglements. Social reforms, he thought, must take into consideration the sanctity of private property—"the only foundation which God has given to His family and to society"; and those which he proposed were humanitarian in nature, such as the abolition of capital punishment and of slavery. In a hazy way he envisaged a social reform party that would convert conservatives to reforms and radicals to moderation. For this reason he is sometimes regarded as the inspirer of the French

Radical Socialists, the "bourgeois party with a popular soul."

As a writer, although his publications were voluminous and varied, Lamartine's distinction comes solely from his poetry. But even the fame which the *Méditations poétiques* and *Jocelyn* (2 vols., Paris 1836; tr. by F. H. Jobert, Paris 1837) brought him is now slowly declining, as it becomes recognized that he lacked the vigor and originality of a great romantic poet.

J. SALWYN SCHAPIRO

Works: *Oeuvres de Lamartine*, 7 vols. (Paris 1862–68); *Correspondance de Lamartine*, 6 vols. (Paris 1873–75; 2nd ed., 4 vols., 1881–82).

Consult: Quentin-Bauchart, Pierre, *Lamartine, homme politique* (Paris 1903); Deschannel, É., *Lamartine*, 2 vols. (4th ed. Paris 1901); Barthou, Louis, *Lamartine, orateur* (Paris 1916); Whitehouse, H. R., *The Life of Lamartine*, 2 vols. (Boston 1918); Schapiro, J. S., in *Political Science Quarterly*, vol. xxxiv (1919) 632–43; Lebey, André, *Lamartine dans ses horizons* (Paris 1929); Guérin, D., "Les idées sociales de Lamartine" in *Revue des sciences politiques*, vol. xlvii (1924) 396–414.

LAMAS, ANDRÉS (1817–91), Uruguayan statesman, publicist and historian. Lamas was born in Montevideo, but as he spent a large part of his life as an exile or diplomat in Brazil and Argentina his statesmanship, diplomacy and journalistic activity are identified with southeastern South America as a whole. Through this activity he helped free the La Plata region from the dominance of the dictatorship set up by Juan Manuel Rosas in Argentina. He also propagandized the South American brand of Saint-Simonism, the principles of which he was influenced to adopt not only by the numerous refugees from the regime of Louis Philippe who had made Montevideo a Saint-Simonian center but by the contacts he established in the course of his struggle against Rosas. In Montevideo he encountered and cooperated with José Esteban Antonio Echeverria, Juan María Gutiérrez, Juan Bautista Alberdi and their fellow exiles who had attempted to adapt the principles of the school to Argentina. He also cooperated with and shared the ideology of the Brazilian Baron Irineo Evangelista de Sousa de Mauá, who financed the war which caused the downfall of Rosas. Mauá, who became the greatest South American financier of his day, was a Saint-Simonian of the practical school influenced by Michel Chevalier, which looked upon industrial development as the instrument of social betterment. Lamas' writings, however, affected as they are by the struggle with Rosas in the first period of his life and by later incidental circumstances, do not display a consistent Saint-Simonian philosophy. Moreover as their author was a typical representative of the universalism of the South American intelligentsia, they cover many fields but seldom reach a high level of scholarship, although some of them are highly stimulating. His attempt to account for the peculiarities of the history of Latin America largely in the light of the conditions of its discovery and conquest are of less importance than some of his other works. He has enjoyed some distinction as an economist; to the colonial provincialism or *americanismo criollo* of Rosas he opposed Europeanization, the attraction of foreigners and foreign capital and industrialization. He held that the imitation of the conservative English banking methods was unsuited to young countries, and he presented eclectic theories of money and credit. For the solution of the agrarian problem he advocated Rivadavia's scheme of emphyteusis, which, he held, would assure the cultivation of the land because the state retained its ownership and which would moreover give society through a single tax the benefit of the land values that it created.

J. F. NORMANO

Important works: *Apuntes históricos sobre las agresiones del dictador argentino D. Juan Manuel Rosas* (Montevideo 1849); *Juan Diaz de Solis, descubridor del Río de la Plata* (Buenos Aires 1871); *Biografía de D. Joaquín Suárez* (Montevideo 1881); *D. Bernardino Rivadavia, libro del primer centenario de su natalicio*, by Lamas and others (Buenos Aires 1882), partially reprinted as *Rivadavia, su obra política y cultural* (Buenos Aires 1915), and as *La obra económica de Bernardino Rivadavia* (Buenos Aires 1917); *Noticia histórica sobre la república oriental del Uruguay* (Montevideo 1849); *Estudio histórico y científico del banco de la provincia de Buenos Aires* (Buenos Aires 1886); *El génesis de la revolución e independencia de la América española* (Buenos Aires 1891); Introduction to his edition of Lozano, Pedro, *Historia de la conquista del Paraguay*, 5 vols. (Buenos Aires 1873–75) vol. i, p. i–cxlviii.

Consult: Roxlo, Carlos, *Historia crítica de la literatura uruguaya*, 7 vols. (Montevideo 1912–16) vols. i–ii; Faría, Alberto de, *Mauá: Irenêo Evangelista de Souza Barão e Visconde de Mauá 1813–1889* (Rio de Janeiro 1926); Coni, E. A., "La legislación agraria de Rivadavia según Andrés Lamas" in *Revista argentina de ciencias políticas*, vol. xvii (1918–19) 162–80, 304–23.

LAMBARDE, WILLIAM (or Lambard), (1536–1601), English jurist and antiquarian. Lambarde was admitted as a student to Lincoln's Inn in 1556, elected a bencher there in 1579 and appointed a justice of the peace in the same year. He is best known for his *Eirenarcha* (London

1581, rev. ed. 1610), a book on the office of the justices of the peace. It was first published in 1581 and twelve editions or reprints between that year and 1619 testified to its popularity. The functionaries of whom he wrote had by the end of the sixteenth century become extremely important factors in the working of local administration, whether on the purely executive or on the judicial side. Hence there was already a fair amount of literature in existence for their guidance and Lambarde freely confessed his debt to the anonymous *Boke of Justyces of Peas*, thirty-two editions and reprints of which appeared between 1506 and 1580, to Sir Anthony Fitzherbert's book on the justices of the peace and to a then unprinted tract by Thomas Marowe. What made his *Eirenarcha* so acceptable was not merely his incorporation of the recent statutes and case law affecting justices of the peace but the clarity of his exposition and the easiness of his style, which compared favorably with the crabbed technicality or the jejune severity of his predecessors.

Other works of his were the *Archaionomia* (London 1568), a paraphrase of Anglo-Saxon laws, of which use was made by the disputants in the constitutional battles of the next century; the *Archeion* (London 1591), a historical commentary on the central courts of justice in England; and *A Perambulation of Kent* (London 1576, rev. ed. 1596), which is the earliest known history of any English county.

PERCY H. WINFIELD

Consult: Holdsworth, W. S., *A History of English Law*, 9 vols. (3rd ed. London 1922–26) vol. iv, p. 117–19; Putnam, B. H., *Early Treatises on the Practice of the Justices of the Peace in the Fifteenth and Sixteenth Centuries*, Oxford Studies in Social and Legal History, vol. vii, no. xiii (Oxford 1924); Winfield, P. H., *The Chief Sources of English Legal History* (Cambridge, Mass. 1925) p. 45, 329.

LAMENNAIS, HUGUES FÉLICITÉ ROBERT DE (1782–1854), French social philosopher. Lamennais, the son of an ennobled shipowner, was influenced in the years of his early education by the rationalistic outlook of the French Revolution. But as a result of his philosophical and historical studies and the influence of his brother Jean Marie he soon became convinced of the paramount importance of religious belief as the basis for a program of action. All his views on social philosophy and social reform were henceforth expressed in the framework of religious doctrine, within which he managed, however, to oscillate between ultraconservative and ultraradical extremes. Indeed few men have achieved such a complete revolution in their thought as this upholder of the strictest Romanist claims who died the excommunicated champion of Red democracy after having occupied every intermediate position between those two poles.

Lamennais was ordained in 1811. Between 1808 and 1825 he published a number of books and articles asserting that the authority of the church was so absolute that not even the pope could dominate the institution or surrender the smallest particle of its authority. Gradually, however, he came to the conclusion that only in a completely free society could the church be really free; so gathering round him a band of ardent young disciples, prominent among whom were Lacordaire and Montalembert, he founded in 1831 the newspaper *Avenir*, the aim of which was to win Catholic opinion to this new conception of the church as "ruling men's minds not by fear or outward power but entirely by spiritual forces exercised in perfect freedom" and in which he championed freedom of the press, freedom of conscience, disestablishment and adult suffrage. Such a program was a complete contradiction of papal policy; Lamennais' paper was soon condemned and he was called upon to recant his liberal views. Far from yielding, he published the most revolutionary of his writings, the *Paroles d'un croyant* (Paris 1834, new ed. Brussels 1838; English translation London 1834), the "red cap on the cross," as it has been termed, and was excommunicated in 1834. His chief disciples, however, submitted with varying degrees of alacrity. Any hopes that Lamennais would now place himself at the head of the growing democratic movement were disappointed: with the break up of the *Avenir* his genius for leadership seemed to leave him. He continued to write and lecture, gradually approaching the full communist position, but never broke away from religion definitely enough to throw in his lot with the socialists of his day, who frankly rebelled against all religious faith. Although elected a deputy to the National Assembly in 1848 he never wielded there the influence which his work as a democratic pioneer would have warranted.

Lamennais' inability to grasp the implications and consequences of his position, his failure to understand the very elements of the theory of papal supremacy and of the ecclesiastical system of which he himself had been so prominent an exponent, go far to explain his ineffectiveness,

which in turn deprived the liberal Catholic movement of any hope of success.

ROGER SOLTAU

Works: Two so-called *Oeuvres complètes*, both incomplete, are available (12 vols., Paris 1836–37; 10 vols., Paris 1844); *Correspondance de F. Lamennais*, ed. by E. D. Forgues, 2 vols. (new ed. Paris 1863); *Oeuvres inédites de F. Lamennais*, ed. by Ange Blaize, 2 vols. (Paris 1866); *Correspondance inédite entre Lamennais et le baron de Vitrolles*, ed. by E. D. Forgues (Paris 1886); *Un Lamennais inconnu, lettres inédites de Lamennais à Benoît d'Axy*, ed. by A. Laveille (Paris 1898); *Lettres inédites de Lamennais à Montalembert*, ed. by E. D. Forgues (Paris 1898); *Lettres inédites de Lamennais à la baronne Cottu*, ed. by G. P. d'Haussonville (Paris 1910).

Consult: Boutard, Charles, *Lamennais, sa vie et ses doctrines*, 3 vols. (Paris 1905–13); Duine, F., *La Mennais* (Évreux 1922); Maréchal, Christian, *La jeunesse de La Mennais* (Paris 1913), and *La Mennais: la dispute de l'essai sur l'indifférence* (Paris 1925); Spuller, E., *Lamennais* (Paris 1892); Roussel, Alfred, *Lamennais d'après des documents inédits*, 2 vols. (Rennes 1892), and *Lamennais intime, d'après une correspondance inédite* (Rennes 1897); Janet, Paul, *La philosophie de Lamennais* (Paris 1890); Dudon, Paul, *Lamennais et le Saint-Siège* (Paris 1911); Faguet, Émile, in *Politiques et moralistes*, 3 vols. (Paris 1891–99) vol. ii, p. 83–132; Renan, E., *Essais de morale et de critique* (Paris 1859) p. 141–203; Laski, H. J., *Authority in the Modern State* (New Haven 1919) ch. iii; Soltau, R., *French Political Thought in the Nineteenth Century* (London 1931) p. 78–88. For more detailed bibliography consult the bibliography on Lamennais by F. Duine (Paris 1923).

LAMETTRIE, JULIEN OFFRAY DE (1709–51), French physician and philosopher. Lamettrie was trained in the physical and natural sciences; later at Leyden he studied medicine under Boerhaave, several of whose works he translated into French. His medical studies and his observations of his own illnesses led him to a system of philosophy which he set forth in several works: *Histoire naturelle de l'âme* (The Hague 1745, new ed. Oxford 1747); *L'homme machine* (Leyden 1748, ed. by M. Solovine, Paris 1921; English translation, Chicago 1912); *Homme plante* (Potsdam 1748); *Réflexions philosophiques sur l'origine des animaux* (Berlin 1750); *Vénus métaphysique, ou essai sur l'origine de l'âme humaine* (Berlin 1751).

Lamettrie was one of the first French writers to develop a materialistic doctrine. His outlook, however, was more vitalistic than mechanistic, since it attributed to matter the capacity of sensation and feeling—indeed all the powers that were hitherto attributed to the soul. In the *Histoire naturelle de l'âme*, his fundamental work, Lamettrie begins with the accepted notions of scholastic metaphysics—the distinctions of soul and body and form and matter—only to lead up gradually to a complete monistic materialism. The same materialism he afterwards expounded without dialectical preliminaries in his sensational *L'homme machine*. The soul without the body, he reasons in the *Histoire naturelle*, can neither exist nor be known. Hence the senses, which depend upon the body, are the sources of and guides to all our knowledge. Now the senses teach us that form cannot exist without matter or matter without form but that all matter receives its form from other matter; the same is true of motion, which does not exist by itself but is received by one piece of matter from another.

Having thus demonstrated that form and motion do not emanate from an immaterial principle acting upon purely passive matter but are contained as principles in concrete material substances, Lamettrie goes on to show that matter has also the capacity of feeling, since animals, which have no soul whatever, express their emotions in the same manner as men. With this as a corner stone Lamettrie proceeds to build up his whole psychology and theory of knowledge. All the human faculties, memory, imagination, judgment, passion, are, like sensations, essentially material manifestations. Only theology can affirm the existence of a rational soul as an immaterial entity, but the arguments of theology need not be retained by philosophy. It follows therefore that the same determinism which governs movements of matter also controls the fluctuations of the soul. Men (as well as whole peoples) undergo primarily the influences of the material conditions under which they live.

It is through the organization of the human body, on the one hand, and the action of material circumstances, on the other, that Lamettrie explains the origin of moral and political ideas. The organization of the body predestines man to seek utility, pleasure and happiness and this search is the natural moral law. Knowledge of the existence and attributes of God is practically unimportant. Lamettrie's empirical sensualism led him to agnosticism in metaphysics and to utilitarianism and relativism in morals.

While the pursuit of utility is a universal law, life in society results in the diversification of human customs. There arise civilized customs and complex feelings, in which education may play an important role whether by developing the organization of the individual or by leading him better to serve the interests of society and to identify his welfare with that of society.

All these ideas, developed between 1745 and 1751, became the most commonplace themes of Diderot and the *encyclopédistes*. Certain of them are found also in Voltaire, Rousseau and Buffon.

RENÉ HUBERT

Works: *Oeuvres philosophiques*, 3 vols. (new ed. Berlin 1796).

Consult: Boissier, R., *LaMettrie, médecin, pamphlétaire et philosophe* (Paris 1931); Poritzky, J. E., *Julien Offray de Lamettrie, sein Leben und seine Werke* (Berlin 1900); Lange, F. A., *Geschichte des Materialismus und Kritik seiner Bedeutung in der Gegenwart*, 2 vols. (new ed. Leipsic 1926), tr. by E. C. Thomas, 3 vols. (3rd ed. London 1925) vol. i, bk. i, sect. 4, ch. ii; Paquet, H. R., *La philosophie matérialiste au XVIII^e siècle, essai sur La Mettrie, sa vie et ses oeuvres* (Paris 1873); DuBois-Reymond, É., *Lamettrie* (Berlin 1875).

LAMMASCH, HEINRICH (1853–1920), Austrian international jurist. Lammasch achieved fame as a champion of international arbitration in the pre-war period and was one of the most prominent figures in the peace movement. While professor of criminal law at the University of Vienna he displayed his international bent in a work dealing with extradition, *Auslieferungspflicht und Asylrecht* (Leipsic 1887). He was led by his participation as technical expert in the Austro-Hungarian delegation at the Hague Peace Conference of 1899 to turn more and more to questions of international law. He was consulted repeatedly after he became Austrian member of the Hague Tribunal. Thus in 1903 he was arbiter in the Venezuela question and in 1905 in the Muscat Dhows case; in 1910 he presided in the North Atlantic Coast Fisheries case involving the United States and Great Britain and in the Orinoco Steamship Company case between the United States and Venezuela. He also served the cause of arbitration as a scholar and publicist, arguing for its institutionalization in *Die Lehre von der Schiedsgerichtsbarkeit in ihrem ganzen Umfange*, published in two parts in the Handbuch des Völkerrechts series (vol. iii, pt. iii, Stuttgart 1913–14). In several works he expressed his faith in a renaissance of international law after the World War. Lammasch himself regarded his *Das Völkerrecht nach dem Kriege* (Institut Nobel Norvégien, Publications, vol. iii, Christiania 1917) as his most important work. As a member of the Austrian upper house he had pursued during the war an outspoken policy of appeasement with the Entente and for this reason at the end of October, 1918, he was appointed by the last Hapsburg emperor, Charles, as chief of the Austrian ministry. But he was unable to prevent the collapse of the monarchy, and after he had vainly sought as member of the Austrian peace delegation at Saint-Germain to obtain equitable peace conditions he withdrew from active life and died in complete retirement.

WALTHER SCHÜCKING

Consult: Scott, J. B., in *American Journal of International Law*, vol. xiv (1920) 609–13; Bisschop, W. R., in *British Year Book of International Law, 1920–21* (London 1920) p. 223–30; Sperl, Hans, in *Neue österreichische Biographie*, ed. by Anton Bettelheim, vol. i (Vienna 1923) p. 44–54.

LAMOIGNON, GUILLAUME DE (1617–77), French jurist. Lamoignon participated in the *Fronde* but he knew when to rejoin the party of the king, who showered him with favors. Despite this vacillation his reputation as an honest man and honest jurist impressed Cardinal Mazarin and in 1658 he became president of the Parlement of Paris. Taking advantage of whatever independence magistrates possessed at that time he defended with conviction the rights of the Parlement. In 1661 he presided at the celebrated trial of Fouquet, but as he intended to acquit him he was replaced by Séguier. Another evidence of his honesty was his intercession with Colbert on behalf of the holders of *rentes*. He maintained his position against Colbert at the Conseil du Roi and before the Dutch war succeeded in inducing the king to raise a loan rather than to levy new taxes.

But Lamoignon rendered his greatest service in the unification of French law, at which he worked ceaselessly with Fourcroy and Auzanet. Even in the second half of the seventeenth century France did not know the benefits of legal unity. Colbert proposed, as he said, to "compose French law"; and when he appointed a judicial council to draft civil, criminal, commercial and maritime ordinances, Lamoignon was principally charged with studying and reviewing the projects. He had a large share in the drafting of the Ordinance of 1667 relating to civil procedure and that of 1670 relating to criminal procedure. In private law Lamoignon's great work is his *Arrestez de M. le Premier Président de Lamoignon ou loix projetées* (2 vols., Paris 1702; new ed. 1783), which following the objectives of such men as Dumoulin and Loysel also sought to fuse the *coutumes*, to bring together under different titles all the rules of French jurisprudence, in order thus to provide a common legislation for the entire kingdom.

PAUL THOMAS

Consult: Monnier, F., *Guillaume de Lamoignon et Col-*

bert (Paris 1862); Clément, P., "La réforme des codes sous Louis XIV" in *Revue des questions historiques*, vol. vii (1869) 115–44; Esmein, A., *Histoire de procédure criminelle en France* (Paris 1882), tr. by John Simpson as *History of Continental Criminal Procedure*, Continental Legal History series, vol. v (Boston 1913) p. 204–10; Viollet, Paul, *Droit privé et sources, histoire du droit civil français* (3rd ed. Paris 1905) p. 236–42, 260 with further bibliography.

LAMPERTICO, FEDELE (1833–1906), Italian economist. Lampertico owes his distinction not to any original contribution to economic theory but to his participation together with Scialoja, Cossa, Messedaglia, Luzzatti and Cusumano in the movement to revitalize the methods of economic research by stressing inductive investigation. The movement culminated in the famous congress of the Associazione per il Progresso degli Studi Economici held in Milan in 1875 and in the publication of the first (Paduan) series (1875–79) of the *Giornale degli economisti* (formerly *Rassegna di agricoltura, industria e commercio*). A spokesman of the new historical school, Lampertico was made the target of an impassioned attack by Francesco Ferrara on the invasion of economics by German historical tendencies. Lampertico replied that in its predilection for inductive observation as against abstract deduction and for principles of local and temporary validity as opposed to universal and absolute generalizations the new school was following scientific traditions well established in Italy. He did not, however, deny the existence of general laws in economics but only cautioned against their assumption on a priori grounds or without sufficient inductive basis. Lampertico's preference for historical studies is evidenced by his *Giammaria Ortes e la scienza economica al suo tempo*, an essay on the Venetian friar who in the second half of the eighteenth century came very near to the formulation of the Malthusian doctrine of population. In 1871 he published *Sulla statistica teorica in generale e su Melchiorre Gioia in particolare*, a study of the beginnings of statistics in Germany and Italy. Lampertico completed only five volumes of his general treatise, *Economia dei popoli e degli stati*, which was for a time heralded as a new classic.

Lampertico combined pursuit of scholarship with active participation in the political and economic affairs of his country. From 1866 to 1870 he was a member of parliament and from 1873 senator for life; some of his senatorial reports rank as classics. He successfully resisted the introduction of agricultural protectionism in 1885 and on several occasions urged the adoption of various measures of social reform. It was largely as a result of his untiring efforts as exemplified in his reports on the non-convertible banknote issue in 1868 and on the resumption of cash payments in 1881 that the circulation of paper money did not undermine monetary stability in the years 1866 to 1884 and that the paper issues were subsequently kept within bounds. In all his activities he effectively combined theoretical knowledge with keen insight into everyday economic problems.

LUIGI EINAUDI

Important works: *Giammaria Ortes e la scienza economica al suo tempo* (Venice 1865); *Sulla statistica teorica in generale e su Melchiorre Gioia in particolare* (Venice 1871, 2nd ed. Rome 1879); *Economia dei popoli e degli stati*, 5 vols. (Milan 1874–84); "A Francesco Ferrara" in *Giornale degli economisti*, vol. ii (1875–76) 115–44; *Della vita e degli scritti di Luigi Valeriani Molinari, economista* (Rome 1904).

Consult: Rumor, Sebastiano, *La vita e le opere di Fedele Lampertico* (Vicenza 1907), with complete bibliography; Schullern-Schrattenhofen, Hermann von, *Die theoretische Nationalökonomie Italiens in neuester Zeit* (Leipsic 1891); Loria, Achille, in *Economic Journal*, vol. xvi (1906) 311–13.

LAMPRECHT, KARL (1856–1915), German historian. Lamprecht, the son of a Protestant minister, was born in Jessen and studied at the University of Bonn. After various minor youthful writings—*Beiträge zur Geschichte des französischen Wirtschaftslebens im elften Jahrhundert* (Leipsic 1878), *Initial-Ornamentik des VIII. bis XIII. Jahrhunderts* (Leipsic 1882)—he published in 1886 his first large work, *Deutsches Wirtschaftsleben im Mittelalter* (3 vols., Leipsic 1885–86), a product of wide original research and monographic thoroughness, devoted in the main to the Moselle territory. In 1890 he became professor at Marburg and in 1891 at Leipsic, where he taught until his death.

Lamprecht's most important work is his *Deutsche Geschichte* (12 vols., Berlin 1891–1909; 6th ed. of vol. i, 5th ed. of vols. ii–v, and 4th ed. of vols. vi–xii, 1920–22) supplemented by his *Zur jüngsten deutschen Vergangenheit* (3 vols., Berlin 1901–04; 4th ed. 1921–22). This work represented several important advances in historical methodology and raised a wave of controversy both in Germany and abroad. Lamprecht broadened the range of general historiography beyond the confines of an exclusively or predominantly political treatment of the past to a complete picture of national, economic and intellectual history. He introduced into professional historiography the collectivistic and economic

point of view as it was first developed by Karl Marx. He considered it of primary importance to trace the history of classes and social groups and of economic mass movements in the development of the social life, of the forms of literature and art, of the great currents in intellectual life. Economic hyperboles, however, such as the characterization of Walther von der Vogelweide as a product of money economy, flowed often from his pen.

Lamprecht adapted to history the idea of evolution and used it to greatest advantage in his treatment of the great collective phenomena of history. In this connection he developed the idea of a collective psychical condition for every age, which like a diapason penetrates into every phase of human activity. In his *Deutsche Geschichte* he characterizes the primitive period as the symbolic, the early Middle Ages as the typical, the later Middle Ages as the conventional, the Renaissance and the Enlightenment as the period of individualism, the age of romanticism and the industrial revolution as one of subjectivism and the most recent period as one of nervous tension (Reizbarkeit). In itself a concept of great range and thus of highest value, it is defective in that it does not permit, as it should, the formation of a unified, well organized whole but jumps from one field of life to another. This is a fault in construction, bringing into the plan a descriptive element and depriving it of a large measure of desirable conceptual strength. Lamprecht's collectivism also suffers from its lack of attention to the part played by great leaders and creative men in the fields of action and intellect. Such data as he does have are intercalated instance by instance in the general exposition but are not bound up with it organically. He always wrote the history of facts, never in a deeper sense of personalities and of men. He never realized the need of creating a history of personality instead of mere biographical fragments.

It was Lamprecht's endeavor to demonstrate the conformity of history to law, but his demonstration remained theoretical. He believed that the succession of periods which he established for German history was also of universal validity, and he intended to demonstrate his thesis by a universal-historical exposition. His death prevented him from carrying out this plan.

Lamprecht was of a controversial temperament; he enjoyed attacking and was himself bitterly attacked. He achieved a large measure of success both in Europe and in America, which he visited and where he received an honorary degree at Columbia University, but the German academic historians opposed his theories fiercely. His methodological failings, however, cannot lessen the greatness in range and in worth of his work. Lamprecht founded no school and his point of view may perhaps not be retained in the future, but traces of his work have unconsciously permeated much of contemporary historical writing and he has had particular influence on such men as Steinhausen, Goetz in Germany and Lacombe, Berr, Monod and Pirenne in France and Belgium.

Lamprecht elaborated his views on history in his *Alte und neue Richtungen in der Geschichtswissenschaft* (Berlin 1896) and in *Moderne Geschichtswissenschaft* (Freiburg i. Br. 1905, 3rd ed. Berlin 1920; tr. by E. A. Andrews as *What is History?*, New York 1905). In 1909 he founded the Institut für Kultur- und Universalgeschichte in Leipsic, which served as a center for research carried on along the lines developed by him.

KURT BREYSIG

Consult: Kötzschke, R., "Verzeichniss der Schriften Karl Lamprechts" in Sächsische Akademie der Wissenschaften zu Leipzig, Philologisch-historische Klasse, *Berichte uber die Verhandlungen*, vol. lxvii (1915) 105–19; Kötzschke, R. and Tille, A., *Karl Lamprecht* (Gotha 1915); Ritter, M., *Die Entwicklung der Geschichtswissenschaft* (Munich 1909) p. 436–61; Schmoller, G., "Zur Würdigung von Karl Lamprecht" in *Schmollers Jahrbuch*, vol. xl (1916) 1113–40; Arens, Franz, "Karl Lamprecht" in *Preussische Jahrbücher*, vol. cciii (1926) 191–213 and 306–28; Seifert, F., *Der Streit um Karl Lamprechts Geschichtsphilosophie* (Augsburg 1925); Spiess, E. J., *Die Geschichtsphilosophie von Karl Lamprecht* (Erlangen 1921); Hellpach, W., "Geschichte als Sozialpsychologie" in *Kultur und Universalgeschichte* (Leipsic 1927) p. 501–17; Barnes, H. E., *The New History and the Social Studies* (New York 1925) p. 198–204.

LAMPREDI, GIOVANNI MARIA (1732–93), Italian political theorist and jurist. Lampredi after first studying literature and philosophy turned to theology and secured his doctorate in 1756 at the Theological College of Florence. In 1763 he was appointed to the chair of canon law at the University of Pisa, where he later became professor of public law. As a result of his teaching in the latter post he wrote his principal work, *Juris publici universalis sive juris naturae et gentium theoremata* (3 vols., Leghorn 1776–78, 3rd ed. Florence 1792–93; tr. into Italian by D. Sacchi, 4 vols., Pavia 1818, 2nd ed. Milan 1828). Second only to the earlier great works of Grotius, Pufendorf, Burlamaqui and Mably that of Lampredi is distinguished for order and clarity, for profound knowledge and for the feeling of

humanity which pervades the whole. Lampredi's reputation was increased by his *Del commercio dei popoli neutrali in tempo di guerra* (2 vols., Florence 1788 and Milan 1831), which was translated into various languages and occupies an important position in the literature of international law. In this work he upholds the thesis, which was already being put forward in the United States, that neutrals except in situations involving legitimate defense on the part of the belligerents should be allowed to trade freely with belligerents, as in time of peace, on the sole condition of impartiality.

PROSPERO FEDOZZI

Consult: Banucci, P., *Elogio di G. M. Lampredi, professore di diritto pubblico nell'Università di Pisa* (Florence 1793); Cauchy, E. F., *Le droit maritime international*, 2 vols. (Paris 1862) vol. ii, p. 269–82; Pierantoni, A., *Storia degli studi del diritto internazionale in Italia* (2nd ed. Florence 1902) p. 835–57; Wheaton, Henry, *History of the Law of Nations in Europe and America* (New York 1845) p. 309–22.

LANCASTER, JOSEPH (1778–1838), English educator. In 1798 Lancaster opened in London a humble free day school for poor children, which soon had several hundred pupils. Compelled to use the older children to instruct the younger, he organized so thorough and effective a "monitorial system" that many visitors testified to its superiority over all contemporary pedagogical methods and accepted his claim that one master could educate a thousand children. Lancaster's business inefficiency led to the formation of a committee to manage his affairs; this became in 1813 the British and Foreign School Society. Observing that Lancaster was winning influential support, the Church party founded denominational monitorial schools, put forward Andrew Bell, an Anglican clergyman, as the real discover of the method and in 1811 founded the National Society for Promoting Education of the Poor. Lancaster soon left the British and Foreign School Society, which seemed to be overshadowing his own reputation, and devoted the rest of his life to educational propaganda in England, Ireland and America. Schools of the Lancaster type were established in France, the United States, Canada and South America.

His importance lies in his own sound pedagogical intuitions and in the influence of the monitorial school on the English pattern of elementary education. His writing abounds in devices and ideas markedly in advance of his time. Cheapness, simplicity and widespread public approval led to a rapid multiplication of monitorial schools, but their influence on elementary education was harmful. The system was alien to experiment and inquiry, magnified the importance of reading and reduced the teacher to the supervising of transient, ignorant and unskilled monitors. Its cheapness was a reproach to all other reformers, and its mechanical simplicity developed a routine procedure from which escape has proved slow and difficult.

FRANK SMITH

Important work: *Improvements in Education* (London 1803, 3rd ed. 1805).

Consult: Salmon, D., *Joseph Lancaster* (London 1904).

LAND BANK SCHEMES. In the many attempts to replace or supplement precious metals as a basis for note issue land bank schemes represent a series of experiments in which land was resorted to as the proper security. They fall into two groups, depending on whether the purpose underlying their formation was merely to expand the existing currency or in the course of transition to a stable metallic currency to replace a depreciated currency. The first group comprises the land bank experiments in England at the close of the seventeenth century and in the American colonies during the first half of the eighteenth century, the John Law scheme of 1717 and the experiment in assignats during the French Revolution. The second includes the Danish currency reform of 1813 and 1818 and the German monetary reform of 1923. Land bank schemes should obviously be distinguished from modern land mortgage banks, which serve merely as agencies for the mobilization of savings rather than for the creation of new credit in the form of note issues.

Several factors contributed to the origin and spread of the land bank projects in seventeenth century England. The remarkable commercial and industrial expansion, the growing failure of the supply of precious metals to meet the requirements of trade, the consequent disruption of business, the currency disorganization brought about by the general practise of debasing the coins in circulation and the increasing realization of the economic significance of the institution of credit—all these focused the attention of public opinion upon the necessity of supplementing metallic currency with other means of payment. The general confidence enjoyed by the goldsmith notes, based at the outset on gold deposits, inspired the practise of effecting payments by bills of credit secured by stocks of merchandise. It was but a short step from merchandise as a

basis for the issue of bills of credit to land, the most durable commodity. The attractiveness of land was further enhanced by the changing conception of wealth and a shift in emphasis from precious metals to land and labor, which became manifest at the close of the seventeenth century. Finally, the idea of land as a source of credit appealed to the economic interests of the landowning class, which saw in this a means of strengthening its position at a time when control was rapidly passing to the rising merchant class; it was further encouraged by the government, which favored any extension of banking credit as an additional source of public credit.

The establishment of land banks was first suggested by Samuel Hartlib in 1653. A little later Francis Cradocke was authorized by Charles II to establish land banks in Barbados, but apparently the plan was never put into effect. The Bank of Credit, organized by the City of London in 1682, although established chiefly as a bank of credit against warehoused goods granted credit on mortgages on houses and estates. Four land banks were established in 1695 and 1696: John Asgill and Nicholas Barbon founded the Land Bank; John Briscoe the National Land Bank; Hugh Chamberlen the Bank of Credit on Land Rents, also called the Office of Land Credit; and, finally, Parliament adopted one of Chamberlen's schemes and founded the National Land Bank, to be distinguished from Briscoe's institution of the same name. While these schemes varied in detail, their underlying idea as expressed by Asgill was that "securities on Land's . . . are capable of being made Money." Land was to be mortgaged to the banks, which would in turn issue banknotes secured by the mortgages. Briscoe proposed to issue loans "in money or bills of credit" at 3.04 percent up to three fourths of the value of the land "settled" on the bank. Chamberlen promised to grant £8000 in "bills of credit" for every £150 of annual value of land, repayable in one hundred annual instalments of £100 each. In addition the subscribing landowners were privileged to receive for every £1000 paid in coin £7000 in notes of the bank as a loan. Of the £8000 of credit granted to subscribers £2000 was to be in the form of shares in a loan made to the government. It was presumably this circumstance which induced the government to adopt Chamberlen's scheme as the basis for its National Land Bank; the bank was intended to raise a government loan of £2,564,000. None of these schemes, however, proved successful. The private land banks failed because their notes did not win the confidence of the people. The public had been accustomed only to those forms of paper money in which an immediate liquidation of the coverage was possible; this was true of the notes secured by merchandise but not of the land money which carried no recourse to specific plots of land. The government bank failed because the landowners refused to mortgage their lands. Moreover the increasing success of the Bank of England demonstrated the superiority of its principles to those underlying the land credit schemes and interest in the latter subsided; there is no record of any land banks in England after 1700.

The land bank experiments in the mother country were not unnoticed in the colonies, where conditions, acute shortage of coin and an abundance of land, were still more favorable to the introduction of "land money." Massachusetts Bay granted a land bank concession in 1686 authorizing the issue of notes secured by real estate, to "be esteemed as current moneys in all receipts and payments as well as for His Majesty's Revenue." For unknown reasons the project was never executed. The plan was revived in 1714 but failed to obtain the approval of the General Court, which had itself issued £50,000 in banknotes secured by real estate. Another land project was launched in 1740 providing for the issue of £150,000 in manufactory notes, secured by mortgages on land bearing 3 percent interest and repayable in twenty annual instalments in manufactory notes or in commodities, such as hemp and flax. The bank, however, was dissolved in 1741. In Connecticut the New London Society United for Trade and Commerce issued notes in 1732 but was dissolved the following year, its notes being exchanged for government notes. More widespread were the public loan or land banks which were organized in twelve of the thirteen colonies and charged with the issue of notes secured by land. Rhode Island ranked first in the use of such currency. In Pennsylvania a loan office was authorized in 1723 to issue small notes in denominations up to twenty shillings secured by estates up to one half of their value. The loans could not be in amounts less than £12.10.0 or more than £200, bore 5 percent interest and were to be repaid in eight equal annual instalments. The experiment was generally considered as beneficial to the province and was repeated with equal success in 1739. It is significant that the size of the loan was limited and its term fixed.

Of much wider scope were the experiments in land money in eighteenth century France. The first of them was carried out by John Law, who believed that a paper currency is preferable to a metallic currency and that land is superior to precious metals as a basis for note issue. The acquisition of title to all the land in Louisiana by the Compagnie d'Occident organized in 1717 enabled him to put his scheme into effect. Law used the shares representing the value of the Louisiana land as a basis for the note issue of the Banque Royal. As long as the note issue was limited in amount there was general confidence in the notes. The financial needs of the company as well as the growing requirements of the government, however, forced a continuous increase in the note issue, which in turn necessitated an increase in the amount of stock completely out of proportion to the value of the land which the stock supposedly represented. For a time the speculative movement continued to support the price of the hopelessly watered stock and the public still deemed it safe collateral for the note issue. But once the speculative wave receded and the value of the securities collapsed, the notes obviously shared the fate of their collateral. As distinct from the notes of the Banque Royal the paper currency of the French Revolution, the assignats (*q.v.*) and *mandats territoriaux*, was secured by lands of the émigré nobles and of the church expropriated by the government. But the value of the land was indeterminate and the notes were actually inconvertible paper money whose value was rendered worthless by overissue.

The idea of land as security for note issue, however, proved valuable and workable in the Danish currency reform of 1813 and in the rehabilitation of the depreciated German currency in 1923. The Danish Rigsbank was organized for the purpose of replacing a variety of depreciated currencies by one stable currency —the *rigsbankdaler*, equal in value to one half of the Schleswig-Holstein silver thaler but not redeemable in specie. The funds of the bank were obtained by the establishment of a first mortgage upon all the real estate of the country amounting to one sixth of its value and paying interest at the rate of 6½ percent. The mortgage could be redeemed at any time by the payment of the full obligation in silver. The bank was authorized to issue notes to the amount of 46,000,000 *rigsbankdaler*, 27,000,000 of which were to be used for redeeming the previous currencies, 15,000,000 for rehabilitating the finances of the government and 4,000,000 for extension of credit. The notes were the sole legal tender currency. Because of the dissatisfaction of the propertied classes with the mortgage indebtedness created by the law the government subsequently modified its provisions and finally revised it in 1818. The Rigsbank was replaced by the Nationalbank and the mortgages were converted into shares, thus turning the debtors of the Rigsbank into the creditors of the Nationalbank, which was instructed to maintain parity between the banknotes and their specified value in silver and in time to assure complete redeemability of the notes. The bank fulfilled its purpose; it still exists although in somewhat different form as Denmark's central bank of issue.

The experiment of the German Rentenbank was essentially similar to that of the Danish Rigsbank. The funds were obtained by imposing a first mortgage on agricultural land and by creating a similar obligation on all business enterprises including banks. The mortgage amounted to 4 percent of value as ascertained in the assessment of the *Wehrbeitrag* (the levy on property for military purposes imposed in 1913) but was not to exceed 3,200,000,000 gold marks. On the basis of this obligation the Rentenbank issued *Rentenbriefe* (bonds) in denominations of 500 gold marks and multiples thereof, which in turn were used as a cover for *Rentenbankscheine*. The issue of the latter was limited to 2,400,000,000 *Rentenmark*, a unit equal in value to a gold mark. *Rentenbankscheine*, redeemable in *Rentenbriefe*, were accepted in all public offices and soon replaced the depreciated paper mark bills; the rate of exchange was one billion paper marks to one *Rentenmark*. The Rentenbank achieved its purpose; it rescued Germany from a complete monetary chaos in 1923 and paved the way for a speedy return to the gold standard in 1924.

None of the schemes described involved the creation of an independent currency expressed in units of land. The lack of homogeneity in land and the difficulties inherent in land valuation obviously disqualify land as a measure of value. But even in the more modest task of serving as a basis for the issue of notes in terms of the standard metallic currency the usefulness of land is rather limited. The notes of the English land banks failed to gain general acceptance because of their doubtful redeemability. But even if land bank notes were to have an immediate recourse to specific plots of land, lack of

mobility and liquidity characteristic of land and the fluctuation of land values would be sufficient to deter many from accepting land notes as readily as coins or notes redeemable in coin. In the case of the John Law scheme and French assignats, where initial acceptability was assured by governmental sanction, the value of the notes was soon impaired by overissue. Even with the cooperation of the money issuing authorities, however, land provides no criterion for the volume of money required and a currency based on land would not possess sufficient elasticity in adapting itself to needs of trade. On the other hand, where, as in the case of the Danish and the German experiments, the size of the note issue was determined upon grounds other than the amount of land and once fixed was rigidly adhered to, the temporary use of the land as a material basis for the issue of notes supplied the psychological stabilizing factor which was essential to the restoration of public confidence, a confidence which had been thoroughly shaken by the almost complete depreciation of the standard currency.

WILHELM VERSHOFEN

See: PAPER MONEY; BANKNOTES; ASSIGNATS; BUBBLES, SPECULATIVE; LAND MORTGAGE CREDIT.

Consult: Richards, R. D., *The Early History of Banking in England* (London 1929); Sparks, Earl S., *History and Theory of Agricultural Credit in the United States* (New York 1932) p. 45–81; Davis, A. M., *Currency and Banking in the Province of Massachusetts Bay*, 2 vols. (New York 1901) vol. ii; Svoboda, Hanno, *Grund und Boden als Währungsunterlage*, Nürnberger Beiträge zu den Wirtschaftswissenschaften, no. 14–15 (Nuremberg 1928); Harsin, Paul, *Les doctrines monétaires et financières en France du XVI^e^ au XVIII^e^ siècle* (Paris 1928) p. 115–90; Harris, S. E., *The Assignats* (Cambridge, Mass. 1930); Imhof, Rudolf, *Die Rentenmark* (Leipsic 1928).

LAND GRANT COLLEGES. *See* AGRICULTURAL EDUCATION; UNIVERSITIES AND COLLEGES.

LAND GRANTS

UNITED STATES ..... B. H. HIBBARD
BRITISH EMPIRE ..... HERBERT HEATON
LATIN AMERICA ..... GEORGE MCCUTCHEN MCBRIDE

UNITED STATES. That the making of grants of land from the public domain has always been a significant public policy in the United States is not surprising in view of the fact that in the early days of the nation the leanness of the public purse made the land the most important asset in the possession of the state and national governments. Land grants in lieu of immediate cash payments have been generously used to reward or partly to remunerate individuals, corporations and institutions for the performance of public or quasi-public services. Even the colonies before the formation of the confederation and the republic had quickly learned to make grants of land for the support of schools and churches and often for roads and other enterprises of a social character; following the organization of the national government federal land grant practises did not differ materially in character from the colonial grants. The public domain was always handled with a view to settlement and land was regarded as a source of revenue. Thus delays in land grants were frequently opposed by both the eastern and western sections of the country: by the east for fiscal reasons and by the west because there settlement and agrarian development constituted the very basis of economic well being. Prompted by these considerations American governments developed a variegated program of land grants, among which the most conspicuous were grants as military bounties; for educational purposes; to encourage internal improvements, particularly the building of railroads; and to help new states erect public buildings and provide needed institutions, such as penitentiaries and asylums. In actual practise the policy of making land grants was not terminated until substantially the whole public domain had been disposed of. But the principle of encouraging enterprises of one kind or another through grants of land was not abandoned; as the nation increased in wealth, money appropriations or subsidies were substituted for land grants, so that today government support of shipping, for example, stems directly from the earlier grant of sections from the public domain to help the states in the building of wagon roads and canals.

The ancient policy of granting land as a military reward or to encourage military service was almost immediately adapted to American colonial needs and conditions. Virginia as early as 1646 gave one hundred acres to the commander of its settlement at Middle Plantation; Connecticut donated land to the leaders in the Pequot war; in Maryland land was granted to the sol-

diers who helped quell an insurrection. These grants were looked upon as compensation for army service. Land grants for a closely related but different purpose appeared when a number of the colonies offered lands to frontier settlers with the stipulation that they maintain some sort of armed resistance against the Indians or take part in the colonial wars which frequently broke out. In 1679 and again in 1701 Virginia made such grants; Connecticut adopted a similar scheme for frontier defense in 1733 and Pennsylvania in 1755. The English government itself in an effort to obtain recruits for service in the French and Indian War made liberal offers of tracts of land ranging from 50 to 5000 acres, depending on the soldier's rank.

At the beginning of the Revolutionary War the Continental Congress made grants to soldiers despite the fact that it had no clear title to any part of the continental area. The individual states pursued a similar policy. To induce enlistments as the war progressed Congress made increasingly tempting offers of land grants: by 1780 a major general could look forward to the possession of 1100 acres and a brigadier general to 850 acres. Before 1800 more than 2,000,000 acres had been distributed by land warrants thus issued to soldiers who had participated in the war. These warrants were not transferable until 1852; as a result many were not redeemed before that date.

To every private serving in the army during the War of 1812 Congress held out the promise of 160 acres of land. Little freedom, however, was accorded the discharged soldiers in their choice of land; they were obliged to apply for it within five years and to take their quarter sections within one of several military districts, the particular assignment being picked by lot. The Mexican War produced a new crop of bounties, which were similar in character to the preceding grants. A law of 1850 granting bounty lands to men of every rank and applicable to all participants in the wars of the republic from 1790 on inaugurated a much more liberal policy. The act of 1852, as has been pointed out, went even further when it made all military bounty warrants assignable instruments; while in 1855 a general act gave a bounty of 160 acres to any soldier, or his heirs, who had seen service in any war after 1790. The amount of land disposed of by the government in this manner was fully 68,000,000 acres, an area equal to that of the state of Colorado.

These measures of the 1850's, instead of benefiting the returned soldiers, had as their chief result the development of a veritable orgy of land speculation. That the government itself was not unaware of this state of affairs may be seen from the following observation by the commissioner of the General Land Office: "The files and records of this office show that not one in five hundred of the land warrants issued and placed in the hands of the soldiers or their heirs has been located by them . . . the most part having been used by persons to acquire title to the public lands for speculation purposes."

With the passage of the Homestead Act of 1862 the land bounty device as a reward for military service went out of use. Veterans of the Union armies, however, were extended significant privileges under the new scheme. They were, for instance, permitted to patent 160 acres (instead of the 80 acres allowed the homesteader) within the limits of railroad grants; they were also permitted to deduct the length of period of service from the minimum five-year residence requirement called for before a title could be gained, although a minimum residence of one year was required even for them.

Land grants for the encouragement of educational programs have an equally long history in the United States. As early as 1621 Virginia made an appropriation of 1000 acres for the support of common schools, while Massachusetts began in 1635 to grant land to towns for educational purposes. These initial grants were in the north mainly to towns and in the south to counties. The early practise of granting to the local unit for school purposes one lot or another designated portion of a township led to the general plan of turning over to the states for school use one section of land, or 640 acres, within each township. This policy was incorporated into the Ordinance of 1787. At first the states paid the money received for the land to the townships; after 1875 such money was ordered by Congress to be put into permanent state school funds. Beginning in 1848 two sections per township were given to the states for school support and later three states, Arizona, New Mexico and Utah, largely because of the poor quality of much of the land involved were allowed four sections per township. In 1875 first with particular application to Colorado and then to states subsequently admitted a restriction was placed on the price at which school lands might be sold. For Colorado the minimum was $2.50 per acre and for Washington, Montana, North Dakota, South Dakota, Idaho and Wyoming it

was set at $10 per acre. Considerable amounts of land other than those directly appropriated by Congress as common school lands were added to swell the school land category. Chief among the additions were the "half-million acre grants," the proceeds from which the five states of California, Iowa, Nevada, Oregon and Wisconsin paid into their school funds; the grants of salt spring lands made to the states of Ohio, Indiana, Missouri, Arkansas and Nebraska and whose sale was also ordered for the purpose of advancing education; and the "swamp land grants" made to the states of Alabama, Florida, Illinois, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Oregon and Wisconsin, the revenues from which were usually also added to the school funds. In all fully 130,000,000 acres of the public domain were distributed among the states for the purpose of fostering common school activities.

Land grants to encourage education did not stop with the common school. Massachusetts established the first endowed college (subsequently renamed Harvard) in 1636 at Newton; and William and Mary College, Yale College and Dartmouth College were the beneficiaries of land grants or received the receipts from the sale of public lands. Congress thus had an excellent precedent to follow when in connection with the Ohio Company and Symmes purchases of 1787 it reserved three townships of land for the purpose of supporting institutions of higher learning in the Ohio Territory. In 1804 three townships were set aside from the public lands of the Northwest Territory for similar use. Following these beginnings each public land state received as a minimum a grant of two townships of land for the support of a university. The newer states were even more generously endowed; nine of them were given land not only for universities but also for schools of mines, normal schools and other specialized educational projects. These gifts varied from 160,000 acres in the case of South Dakota to 800,000 acres in that of Oklahoma.

A special program was evolved for the support of agricultural and mechanic arts colleges. A few states, notably Michigan, Pennsylvania and Iowa, had undertaken the establishment of institutions of this type before the Civil War. It remained, however, for the Morrill Act, which Congress passed in 1862, to make provision for the establishment of such colleges in every state of the union. The statute granted 30,000 acres of the public land for each senator and representative in Congress. Where states did not have within their own borders a sufficiently large area of public land to satisfy the terms of the grant they were to receive an equivalent amount of land scrip. This paper was to be sold to private individuals, who would then be permitted to locate their sections in the still unoccupied portions of the public land states. All the proceeds thus obtained through the sale of land or scrip were to be put into permanent funds. The total amount of land disposed of in this fashion was 11,050,000 acres.

With a view to controlling flood waters, especially of the Mississippi River, and in the hope that such a program would hasten the reclamation of marshy areas Congress began in 1849 a series of swamp land grants to the states. In all some 64,000,000 acres were thus distributed. While the intention of the lawmakers was commendable, the administration of the acts was so lax that only an infinitesimal part of the fixed objective was realized. The federal land commissioner permitted the states to locate swamp land by either one of two methods: they might rely on the surveyors' notes or they might select the lands through their own agents, merely submitting proofs to the federal authorities. In the great majority of cases the states chose the second method, and the land commissioner accepted the most nominal proofs; the result was that a large part of the land ceded to the states under this swamp land program could in no sense be called marshland. Very little reclamation work resulted from the grants. Actually only three of the states used the proceeds for the specified purposes; the rest added the moneys thus obtained to their school funds.

As in the case of military bounties and the support of education there was ample colonial precedent for land grants to encourage private enterprise. The colonies had made grants of land to induce the building of forts, the manufacture of gunpowder, the erection of iron and copper works and indeed any form of industrial activity that individuals might be willing to launch. The young American government adopted the device and used liberal grants of land from the public domain to subsidize particularly the construction of internal improvements. The first bounty of this nature was made to Ebenezer Zane in 1796 for the purpose of establishing ferries on the road west of Wheeling. This grant was not an outright gift but partook of the nature of a preemption right to three sections of land, for which Zane later turned in military warrants.

Actually the first real measure making land grants to promote an extensive internal improvement program was embodied in the act admitting Ohio to the union; by this statute the state was to receive 5 percent (2 percent of which was to be administered by the federal government) of the proceeds from the sale of public lands within its border for use in building roads. In 1823 Ohio was given 81,000 acres; a few years later 170,000 acres were turned over to Indiana for a similar purpose. All told, 3,250,000 acres of land were voted to the states to encourage the construction of wagon roads. Canal subsidies began with a land grant to Indiana in 1824; similar grants were made from time to time and by 1866, when the policy was terminated, a total of 4,500,000 acres had been given to Indiana, Ohio, Michigan, Wisconsin and Illinois. Somewhat similar in purpose were the land grants of 2,250,000 acres made to Alabama, Wisconsin and Iowa for the promotion of river navigation.

Surpassing even this generosity were the great gifts from the public domain made to the railroad builders. The first important grant of this nature was voted in 1850, when Congress ceded to Illinois, Alabama and Mississippi almost 4,000,000 acres which these states were to hold in trust toward the completion of the Illinois Central Railroad. From 1850 to 1871 Congress made eighty such grants to the states in the Mississippi valley. In the 1860's the railroads themselves were made the direct beneficiaries of congressional largess. Among others four great transcontinental railroads—namely, the Union Pacific, the Northern Pacific, the Atlantic and Pacific and the Texas and Pacific—received their charters from the federal legislature and, as subsidies, large areas along their rights of way. The Union Pacific, for example, was given alternate sections of land extending for twenty miles on each side of the road; the Northern Pacific was given twenty sections per mile on each side of the roadbed within the territories and half that amount within the states. During the 1850's and 1860's there passed into the hands of western railroad promoters and builders a total of 158,293,000 acres, an area almost equaling that of the New England states, New York and Pennsylvania combined. Not all the railroads were completed and many failed to fulfil their contract terms, with the result that patents were not filed in every case. Agnes C. Laut (*Romance of the Rails*) has estimated that only twenty-seven railroads earned their land grants and that these were able to certify 115,832,000 acres. In addition to federal land grants the individual states gave some of their public lands to hasten railroad construction. Texas alone made subsidies totaling 32,000,000 acres; the states of the Mississippi valley gave away 20,000,000 acres. The total acreage actually distributed reached the gigantic figure of 167,832,000 acres, or 262,238 square miles, a domain approximately the size of Texas.

The abuses accompanying this reckless policy were so numerous and so apparent that land grants as a form of subsidizing internal improvements ceased with 1871. But the west was to feel the ill effects for fully two decades and much of the hostility toward the railroads centered in the practises followed by these corporations in the disposal of their land. Chief of these evils was the habit of failing to patent their indemnity lands. The land grant railroads had been permitted to select in lieu of such land as would have been included in the first assignment but which for some circumstance, like previous occupation, was unavailable other sections sometimes lying a considerable distance from their grants. In the case of the Illinois Central Railroad, for example, this indemnity area was nine miles on each side of the track beyond the outer line of the regular alternate section grant; in the case of the Northern Pacific Railroad the indemnity lands lay ten miles on each side of the track beyond the borders of the grant. Between 1872 and 1887 with the approval of the General Land Office these indemnity lands were closed to settlers, although the railroads were permitted to cut the timber on them. Thus for fifteen years new homesteaders were frequently unable to approach within fifteen to thirty miles of a railroad. It was not until 1887 through an executive order from President Cleveland that these lands were thrown open for general settlement. In all some 21,000,000 acres were involved.

It is scarcely surprising that once having launched the policy of giving away the public lands to encourage a great variety of public, quasi-public and private activities Congress should be continually besieged to make land grants for the aid of all sorts of projects. The wonder is that with so much land on hand and with so little in the way of a guiding policy adventurers made so little headway. Examples did exist, however, of land grants being made for strange reasons. Thus in 1776 grants of land were offered and a few were actually made to deserters from the British army and navy; three townships in Ohio were given to Canadian refu-

gees soon after the revolution; the American agent to Lisbon was given a township; Lafayette received 34,000 acres; Lewis and Clark were given 1600 acres each and 300 acres were turned over to each one of their thirty-one companions. States received land grants to permit them to erect public buildings, the government bounty ranging from four sections in the case of Indiana to 274,000 acres in the case of Oklahoma. Still another type of land grant was the so-called five per cent fund given to public land states to induce them to make concessions when taxing public lands sold to settlers. Up to the close of the 1880's the federal government expected the states to use such moneys for the construction of public improvements; as has been indicated above, states admitted to the union in 1889 and later were directed to employ the fund for educational purposes.

The policy of land grants in the United States had at its heart a simple principle: the great public domain was to be disposed of as quickly as possible in the interests of settlement and in order to encourage the establishment of needed public services. The only real opposition to this congressional program came from the antebellum South, and this was not on the ground that the public domain was being squandered but because expansion westward by free farmers threatened the political supremacy of the slave planters. Otherwise, particularly following the Civil War, it was the general feeling in the United States that the sooner the free lands were settled the better; such evils as inevitably followed in the train of a program of generous land grants were deemed insignificant in the light of the extraordinary benefits to be realized by the nation at large. For a time, indeed up to the close of the World War, this appeared to be the counsel of wisdom. Rapid settlement of the public domain permitted the United States, a debtor nation as late as 1914, to pay its adverse international balances with the surplus agricultural products made possible as a result of homestead and land grant policies. The common assumption that the world was threatened with a failing food supply furnished an additional spur to the opening of all the public lands as quickly as possible to settlers. It was not until the 1920's that the shortsightedness of the whole procedure first became apparent: the deep depression in American agriculture for some years following the war was due largely to the haste with which the lands of the nation had been brought under cultivation. It is idle to speculate what the nature of American economic development would have been had the public land policy been other than it was. It remains that the lands were disposed of; and American farmers, in whose interests presumably the course was pursued, turned out to be its chief victims.

B. H. HIBBARD

BRITISH EMPIRE. Until about 1830 alienation by free grant, subject perhaps to payment of a quitrent, which was rarely paid, and possibly to conditions of settlement and improvement, was almost the only method of disposing of crownlands in the colonies. Some grants, such as those to Colonel Talbot and the Canada Company, aimed definitely at fostering settlement; others, like the grants to Macarthur and the Australian Agricultural Company, were intended to stimulate the production of a special commodity, such as wool. But these aims were for a long time less important than the desire to strengthen defense, reward friends or public servants, pay debts, dispense patronage or endow religion, all without spending much money.

The relation between sword and plowshare has always seemed intimate and grants of land have frequently been thought a stimulus to martial zeal, a solution of the problems of demobilization and a means for planting defenders at strategic points. Colbert and Talon tried to fortify the Richelieu River zone in Canada by granting seigniories to army officers; Britain offered land, in grants proportional to their position, to any of her officers, soldiers or sailors who cared to stay in America after 1763 and 1783; and after the War of 1812 militiamen were rewarded with assignments of land ranging, according to rank, from 100 to 1200 acres. The desire to strengthen the southern frontier of Lower Canada led to grants of 1200 acres to each member of groups, known as Leaders and Associates, who were willing to settle south of the St. Lawrence. Similar motives influenced policy in Australasia, where, although the defense problem was never so acute as in Canada, there were fears of French or Russian aggression. Ex-soldiers and officers in the infant penal settlement at Sydney could obtain land free; and while the Australasian Land Sales Act of 1842 fixed £1 per acre as the minimum upset price to be paid by civilians it allowed military and naval settlers to obtain free grants. When New Zealand faced its second series of Maori wars after 1860, volunteers were urged to enlist by promises of land carved out of areas taken from

the rebelling natives. Free land played only a minor role in the rewards given those who fought between 1914 and 1918; but at least one state, Tasmania, offered soldiers land worth £100 provided they improved it, and special provision was made for soldier settlements in Canada.

The military were not the only recipients of rewards or of grants on special conditions. In 1670 the Hudson's Bay Company was granted almost all the territory belonging to the middle and west of Canada. In 1763 the governor of Canada was instructed to grant 100 acres of land to every "master or mistress of a family" and fifty acres to every other member of their household on condition that a small quitrent be paid and that three acres be cultivated within three years. Additional grants not exceeding 1000 acres might be made if it appeared that the settler could cultivate the land. The United Empire Loyalists and their children were given 200 acres each as compensation for services and as consolation for sufferings in the American Revolution, and in Upper Canada alone over 3,200,000 acres passed into their hands. Government officials were entitled to grants and in addition special grants were frequently made. Judges, barristers, executive and legislative councilors and their families, clergymen, surveyors, a former bishop of Quebec, the heirs of General Brock, who fell at Queenston in 1812, all received Canadian grants; and 100,000 acres were handed to a "Mr. Cushing and another as a reward for giving information in a case of high treason." In the words of a commission of inquiry of 1830, "The Province of Upper Canada appears to have been considered by Government as a land fund to reward meritorious servants." In addition small grants were made to certain groups of emigrants. The authorities in London and the governor in the colony alike dispensed bounty; and while real settlers had difficulty in securing a plot of ground, the members of the ruling classes and their friends had little trouble in laying a territorial foundation for a colonial aristocracy.

To the military and civil grants given by the state there must be added the ecclesiastical. France had fostered the work of the church in Canada by generous provision of land and England did it even more thoroughly through the clergy reserves. The Constitutional Act of 1791 endowed Protestantism by earmarking an area, in blocks of 200 acres, equal to one seventh of the land granted to laymen. In practise one sixth, not one seventh, of the total area was reserved and in 1839 it amounted to over 3,000,000 acres in the two Canadas. In Australia religion and education were endowed by the grant of one seventh of each county, but less than 500,000 acres had been allotted when the practise was stopped in 1831. The results of this varied generosity in Canada were revealed by Durham in his report of 1839. About half the surveyed area of Upper and Lower Canada had been given away; only a fragment of Nova Scotia was left, while the whole of Prince Edward Island had been handed over in one day in 1767 to sixty-seven British proprietors provided that they settled people thereon, a condition never enforced or observed. The total Canadian grants probably amounted to about 23,000,000 acres.

In Australia the original plan had been to make small grants to ex-convicts, ex-soldiers and free settlers; in 1793 larger grants were authorized to officers, deserving freedmen and settlers in order to stimulate agriculture and fight famine. But this petty plan, framed to feed a small penal community, broke down when wool production became possible and the large pastoral areas west of the Blue Mountains were discovered. Macarthur wanted 10,000 acres for his sheep ranch; the Australian Agricultural Company got 1,000,000 acres, the Van Diemen's Land Company 350,000. Large scale alienation was begun, and by 1831 nearly 7,000,000 acres had been given away. Wool producers got much of it; religion and education received a little. Newcomers with capital obtained one square mile for each £500 brought into the country; those with scanty means could secure land by residing on it and paying quitrent, while for a time any settler who would maintain a convict for a year was given 100 acres. Favoritism and wire pulling brought land into many strange hands—into the possession of infants, absentees, teachers, ships' captains, public officials and others—but the profusion of grants was not as great as in Canada.

From the end of the 1820's the need for reform of colonial land policy had been apparent, for abuses were preventing real settlement and there was marked disparity between the growth of alienation and that of settlement and production. According to Durham only one tenth of the private lands of Upper Canada and one twentieth of those in Lower Canada were occupied and Prince Edward Island was almost empty. Many grantees had no intention of settling on their holdings: loyalists, militiamen and others were selling their claims for a gallon of

rum or a few pounds and speculators were building up huge estates. The patches of unoccupied private, crown and clergy lands prevented continuous settlement and made difficult the construction of roads or the development of community life. The clergy reserves, as symbols of a favored sect, were hated alike by the Catholics of Quebec and the Protestant dissenters of Ontario. Quitrents were rarely paid; the government received little revenue from the land, and such works as surveying and road making were accordingly hindered.

Land grants therefore gave way to land sales. In 1824 Australian pastoralists were allowed to buy land to supplement their grants: Lower Canada in 1826 and Upper Canada in 1827 announced that no more land would be given away. This rule was applied to Australia in 1831, although for ten years thereafter the law was widely evaded. Over two decades elapsed before the outstanding claims in Canada were liquidated; and only in 1854 was the Canadian Parliament able to secularize the clergy reserves, sell the land and after providing pensions for the clergy dependent on the reserves hand over the money to the municipalities. Australian church lands were sold about the same time. In Prince Edward Island popular sentiment demanded the escheat of the lands held by absentee landlords, but the less violent method of expropriation by purchase was adopted, and the last absentee estate was bought in 1875. In the west the Hudson's Bay Company lost possession of Vancouver Island in the late 1850's and surrendered its claims over Rupert's Land and the Northwest Territories in 1869; but for the latter it received £300,000; and one twentieth of the lands between the Red River and the Rocky Mountains opened for settlement during the next fifty years was reserved to it.

Land sales and theories of colonization became popular at about the same time, and policy from 1830 to 1850 was dominated by the influence of Edward Gibbon Wakefield (*q.v.*). Robert Gourlay in 1822 had propounded a theory of colonization for Canada, and Talbot and Galt had shown how model colonies might be built. But Wakefield's theory was the really powerful force, for it provided a condemnation of land grants, a justification of sales, a program for colony building, an excuse for charging a fairly high price for land, a fund for immigration and public works and a guaranty that a steady stream of labor would be available for colonial landowners. It was put forward at the time that Australia was being transformed from a penal settlement to a continent of free settlers and when the need for occupying New Zealand in order to forestall the French was being reluctantly admitted. Wakefield therefore did much to steer the land policy of these two colonies in a direction different from that followed by Canada; the difference became more marked after Britain gave the colonies complete control over their public lands; and while Canada followed the United States in granting land for homesteads, public improvements and education, Australasia kept almost intact the principle that all land must have a price.

Australia and New Zealand had their free land advocates, for that slogan had crossed the Pacific with the gold diggers. When the gold rush subsided, many men wished to become farmers. But Australia by that time had no large fertile areas of empty land left; the "out-back" districts were already occupied by pastoralists who had leased large areas and had the first right to buy any part of their holding at £1 an acre. Governments might bow to popular demand by destroying that preemptive right and by helping the newcomer to find a farm; but few colonial treasurers would agree to surrender land sales as a source of revenue. Hence although Queensland, Western Australia and some New Zealand provinces at times offered free homesteads on the American plan, the general practise was that of sale by instalments at a fixed price or by auction with a minimum upset price. It seemed better to sell the land and put the receipts into the general treasury than to try to dispossess the pastoralist, give away the land and rely on taxation for revenue. For the same reason Australian states were loath to give land to railways. Nevertheless, such grants were made both in Queensland and in Western Australia, where from six to seven million acres were granted for railroad construction between 1881 and 1886. The failure of the companies to dispose of these lands and to work out proper immigration schemes led to a change in policy, and railroad construction and operation became a state enterprise. In New Zealand 4,000,000 acres were granted to the Midland Railway Company, but they were later resumed by the government because the company failed to carry out its contract. Except for the early grants educational costs have been met primarily from state revenue: agricultural and university education have been endowed with sites but otherwise there have been few land endowments. The revenues from 155,480 acres

of crownlands have, however, been set apart for the support of Dookie and another agricultural college in Victoria. Irrigation projects, road construction and soldier settlements are all in the hands of state or federal government departments or of some commission, board or body of trustees; grants of the necessary land are therefore either unnecessary or formal.

Canadian land policy was strikingly different, largely because of Canada's proximity to the United States. The problems of prairie settlement, education and internal improvement were similar to those of the United States and were met in the same way. Canada adopted her neighbor's methods for opening up the prairies; she copied the free homestead system in 1872 and preemption in 1874. In 1880 she gave the Canadian Pacific Railway 25,000,000 acres and $25,000,000. In later years other railroads received some land, and although in 1896 the dominion government abandoned the making of railroad land grants, some of the provinces continued it: in all, about 47,000,000 acres were given by both the federal and the provincial governments to the railroads. Education had been aided by the endowment of twelve townships in 1798. Finally in 1908 two sections in each surveyed township of Manitoba, Saskatchewan and Alberta were earmarked as school lands; they were sold by auction and the money received was invested to provide an income for school maintenance. But higher and agricultural education received no such large specific grants as were made in the United States.

In other parts of the empire there is little that calls for notice. In Africa grants in return for quitrents, occupation or improvement were common in the early period of settlement. In 1820 and 1821 grants of 100 acres were made to males over eighteen years of age and under this system about five thousand British immigrants were settled in the eastern provinces of the Cape. In 1830 grants were made on the borders of the Cape Colony settlement to about a hundred persons who were to occupy the land themselves and to maintain a number of Europeans capable of bearing arms. The following year further grants on these terms were forbidden but they were revived in the 1850's. In Natal grants were made to missions and churches of various denominations. They were, however, insignificant in size and in 1902 totaled only 149,162 acres. South Africa aided its municipalities by granting them the ownership of land in and near the town; the local authority has certain powers of sale, by public auction or private bargain, of the leasehold or freehold of these lands, but the direct income from this source is not very large. The same plan has been adopted in Southern Rhodesia since the granting of self-government, and five towns have been given the title deeds of their townlands with power to sell or lease sites for houses. In the tropical possessions land grants have been virtually abolished, and the general practise is to issue leases up to 99 or 999 years with a revision of the rent at regular periods and with penalties for failure to occupy and improve the tenancy.

HERBERT HEATON

LATIN AMERICA. Land grants as rewards or subsidies are a more prominent factor in Latin America than in the territory settled by people of British descent, primarily because the Spanish and Portuguese established themselves in the New World by means of conquest rather than private colonization enterprise. As a result they were much less willing than the British to recognize native landownership, and the aboriginal inhabitants and the lands which they occupied and tilled as well as the undeveloped lands came into the possession of the conquering governments. Moreover, since the rulers of Spain and Portugal, which were strongly organized autocracies, took active part in the discovery, exploration and conquest of America, the land brought into subjection to such powers became virtually a royal patrimony; and as such it could pass into the possession of individuals only by purchase or by grant from the king, either explicitly given or tacitly assumed after long continued occupancy. The grant, known in the Spanish colonies as a *merced* (a grace, or favor), occupied by far the most conspicuous place in the carefully prepared land distribution system followed by the Spaniards in the establishment of their rule in America. The grant had been employed in the recently terminated Moorish wars, and furthermore land, sometimes accompanied by Indian workers, was the only form of material recompense available in most of the areas invaded in the New World. Thus while the grants were intended to assist in the subjection of the conquered territory to Spanish domination, they were in large part mere rewards for services rendered in the conquest. Although repeated attempts were made by the government to protect the lands occupied by the natives, much of this territory as well as unused land was awarded to members of the conquering armies. In a few countries, notably the

Aztec and Inca empires, certain lands had been set aside to be cultivated for special purposes, such as the support of religious institutions, the use of the nobility and the payment of tribute to the emperor. These were classified by the Spaniards as public lands, and it was in part from them that grants were made to individuals.

The authority to distribute land was commonly delegated by the crown. The commander in charge of an expedition usually made the first gifts. As a colony became more completely organized the viceroy assumed the authority or conferred it upon the governor general of a particular province. In some cases the *cabildo* (the local governing body) or the audiencia (*q.v.*) assumed or received the authority until a royal decree of November 1, 1591, restricted it to the crown and its direct representatives.

While land was granted most frequently to soldiers and other individuals under the encomienda system, which consisted essentially of the assignment to them of Indian villages and the services of their inhabitants, this method was not extensively employed in districts where the Indians were few in number or loosely attached to the soil. Here it was customary to grant only land, the recipient undertaking to introduce the necessary labor. Even in such an area as central Chile, which possessed some well established aboriginal irrigation settlements, these grants were of greater value than the encomiendas; and in such almost uninhabited and scantily developed regions as the pampas of Argentina or the plains of northern Mexico they were of course far more valuable. Even in many districts contiguous to well settled centers, such as the old Aztec capital of Tenochtitlan or Cuzco, the queen city of the Incas, the aborigines were so few that land alone was granted.

Where encomiendas were not available, the plan was to bestow upon the more deserving among the conquering soldiers or those of higher rank *caballerías* (originally lands for mounted troops), consisting generally of some 500 to 1200 acres of land; those of lower military status were to receive smaller portions, *peonías* (originally lands for infantry), of 100 to 200 acres. In practise, however, not many of the soldiers were content to be relegated permanently to the status of mere peasant proprietors. Every individual, however low his social or military rank at home, had the opportunity of becoming an overlord among the subjugated peoples, and most of them sought and received far larger grants of land than the rules decreed. Those who had participated in the campaigns customarily received extensive tracts, often containing whole stretches of country running back from some river, lake or shore line for an undetermined distance or perhaps, as was not infrequently the case in Chile, extending to the crest of the mountains which marked the boundary of the province. Since no survey of the country had been made, definite boundaries were generally impossible. Aided by the background of large feudal estates in old Spain, this type of land grant together with the encomienda fostered the development of latifundia and the consequent oligarchy which has characterized Latin America.

Individuals were also rewarded for founding towns; according to the regulations such founders were to receive one quarter of all the lots. In the late colonial period in Mexico the Spanish settlers, the priest and certain officials were alloted more land than Indian settlers, but holdings were inalienable. Land grants were made not only to individuals—the crown bestowed upon every new town several pieces of land for public use, which were characteristic of the Castilian village: the *fundo legal* was the actual site of the settlement and included space for the central plaza about which every city was formed and for all public and private buildings; the *ejido*, or common, at the exit of the town served for the loading and unloading of carts, mules or human carriers, for a rubbish dump or a slaughterhouse, for games and gatherings; there were also a *dehesa*, or common pasture, for the stock belonging to the inhabitants and a common wood lot, or *montes*, if timber existed near the site. In addition there were the *propios*, which were rented out, and the income from which helped to defray administrative expenses. Because of the general growth of individualism, the demand for land for colonization purposes (as in the province of Buenos Aires in Argentina) and the encroachments of neighboring haciendas (as in Mexico) town holdings have diminished extensively. Nevertheless, some cities still retain their townlands. Quito has its *ejido*; Santiago, Chile, has transformed the old city dump, a survival of its *ejido*, into a park; La Paz uses its *propios* for their original purpose; San Diego, California, now employs part of its pueblo, or townland, for a city hog ranch. As a measure of agrarian reform many Mexican towns of Spanish creation and many more of purely Indian origin, which had lost their holdings, have had their *ejidos* (the term is now applied to the entire common holding) restored and many others have re-

ceived donations of land from the public domain or from expropriated parts of large estates.

In spite of the fact that state and church were closely united in Spain as a result of the reconquest from the Moors and although the conquest of America contained a strong religious motive, few important grants of land made to ecclesiastical agencies appear in the records. When towns were founded, city lots were set apart for churches, convents and hospitals under the control of religious orders. In the minutes of the *cabildos* of Lima and of Santiago, Chile, and in a few other cases there exist records of grants, both of encomiendas and of rural lands, to church dignitaries and organizations. Cortés himself endowed, although perhaps from his own possessions rather than from crown holdings, the Hospital de Nuestra Señora de la Concepción in Mexico City as well as schools and convents. In Spain, however, measures had been taken from time to time to check the accumulation of landed property in the hands of the church, which had been for centuries a pressing problem; and the Spanish government now adopted legislation designed to prevent the church from securing possession of extensive property in the colonies, even forbidding those who received grants (of town lots as well as rural properties) to give or sell or otherwise transfer them at any time to any person connected with the church, upon pain of forfeiture. Although these measures were not strictly obeyed, it was uncommon for the church or its institutions to obtain landed properties directly from the crown; most of the vast holdings acquired by ecclesiastical agencies were secured in other ways.

In their colony of Brazil the Portuguese followed a system of land grants very similar to that which prevailed in the Spanish colonies. In 1532 in accordance with a system long established in Madeira and the Azores the territory was divided into 15 sections nominally measuring 50 leagues along the coast and reaching back without bounds into the interior; these were bestowed as *capitanías*, or fiefs, upon twelve court favorites called *donatarios*, who were authorized in turn to make grants to settlers. The political elements of the system did not succeed and were soon supplanted; several *donatarios* forfeited their holdings and by the middle of the eighteenth century all the *capitanías* returned to the crown, which in such cases granted land directly. Nevertheless, the *capitanía* system served as the basis of land settlement. *Sesmarias*, or subgrants, were made to persons of social position or wealth; these holdings were made large, since a sugar cane plantation was thought to require at least 4 square leagues and a cattle ranch 8 or 9 leagues on a side. These extensive estates became the basis of rural property in Brazil and as in the rest of Latin America resulted in latifundia and oligarchy, with all their economic and political implications.

By the end of the sixteenth century most of the good land within the reach of the centers of white population had been disposed of or at least had come into the possession of Europeans; the original grants with their indefinite boundaries had been much enlarged by unauthorized encroachments upon Indian holdings or upon unclaimed lands adjoining the grants. When the colonies achieved independence there still existed, however, immense areas of crownlands on all the frontiers, left unoccupied by the gradual expansion of settlement. These lands became the public domain of the new governments or, in the case of the several federal republics, of the constituent states; and once the governmental systems had crystallized into permanent form there arose the problem of how best to dispose of the wealth in unoccupied lands. Various conditions have resulted in the wholesale disposal of the public domain by grant or virtual grant. Many military men had to be rewarded for their services in the wars for independence; and the newly formed governments were hard pressed for funds. At later periods continued frontier conditions, political unrest, straitened public finances, dictatorial government and the inability to supervise distant officials in control of land disposal have favored the land grant system. After the winning of independence the opportunities for population expansion increased, and with the ambition to emulate the rapid economic development of the United States land grants have been made for colonization enterprises and railway building. Grants have also been made with the object of establishing effective occupation of disputed territory. Extensive grants of the public domain have too often been but the expressions of favoritism and privilege. The influence of the oligarchy which grew up on the basis of the colonial land system has persisted: it was but natural, at least during the first half century of independence, that this society should aid in bringing about the disposal of the remaining public lands in large blocks like the earlier grants rather than in the small holdings better suited to be the foundations of the democratic states envisaged in republican constitutions. The social

structure enlarged and perpetuated by this process still persists in most of Latin America.

The public land question was of special importance in Argentina. While in most of the other Latin American countries the more desirable lands had already been occupied, here a large part of the level, fertile area of the pampa remained idle. European settlement in Argentina had come mainly from the west, but it was only after access to the pampa region had been made possible from the Atlantic, and particularly after steam navigation had removed the dangers of the doldrums that lay in the path from the Old World, and when the industrial revolution in Europe had created a demand for the agricultural products of distant countries that there arose a widespread desire for the possession of these potential grain lands. For the first few years after independence the government of Argentina gave away the pampas with lavish hand, rewarding soldiers who had taken part in the war; and provincial governments parted with their lands in much the same fashion. Even the leaders of military bands, the *caudillos*, rewarded their followers with gifts from the public domain. To dispose of unused lands was considered the duty of government. Under the leadership of Rivadavia, however, statesmen came to appreciate more fully the value to the state of the virgin lands, and in 1826 an attempt was made to check this extravagant policy; long leases were planned, aiming at the development of the frontier without the alienation of the public domain. The dictator Rosas (1829–52) returned to the former system; his partisans were favored by frequent grants on the frontier or from the confiscated possessions of his opponents, grants which were usually 6¼ square leagues (about 47,900 acres) in extent. While matters improved somewhat after the fall of Rosas, liberal grants of public lands did not cease; in fact they increased during the following years. The frontier was pushed back by wars against the Indians, and politicians and military favorites were "rewarded" by large grants. Under the guise of colonization projects in the new territories extensive grants were obtained also by corporations; some of these were developed as bona fide settlements, but many became merely the holdings of individuals. The government also sold great quantities of land in blocks of 6520 acres at a nominal price. In the territories of Chaco, La Pampa, Neuquén, Río Negro, and in even more distant regions enormous blocks passed into the hands of speculators through grants, concessions and sale for nominal sums or on partial payments. The homestead and other laws of 1884, 1896, 1907 and 1918 attempted to check this orgy of donation, and a closer governmental supervision of methods used in alienating the national domain has tended to rectify the situation. There remain fewer than 200,000,000 acres of Argentinian lands which have not passed into individual ownership.

Perhaps in none of the other Latin American countries have land grants been so extensive, but in most of them a similar system has been followed. One of the most striking instances is that of Mexico, where during the long presidency of Porfirio Díaz (1876–1910) the disposition of public lands by virtual grant grew to enormous proportions. In response to the desire for a survey of the unoccupied national domain and at the same time in order to stabilize the system of land titles all holdings not duly registered were declared to be a part of the public domain (*baldíos*); it was ordered that all *baldíos* be surveyed and that the surveyor be rewarded with one third of the lands measured. Under this and similar legislation great areas of unoccupied land and much that was occupied without legal title passed into the hands of companies which did little more than proclaim the existence of *baldíos* and carry out a hurried survey. Before the end of the Díaz regime and the beginning of the Agrarian Revolution over 50,000,000 hectares had been given away in this fashion by the government; although some was later recovered, much was permanently lost.

Since most of the railways in Latin America were constructed by the state and are still nationally owned, land grants for the encouragement of railway construction have not been as prodigal as in the United States. In some instances, however, private railway builders have been given land with or without the obligation to colonize it. To Wheelwright, who built between 1863 and 1870 the Central Railway connecting Rosario with Córdoba, the Argentinian government allotted a strip of land 1 league wide along the line; the province of Santa Fé contributed about 90 square leagues. Similar grants were made to the Great Southern line leading into the territory of Neuquén. Bolivia and Colombia have paid for the construction of railways with large concessions of land, as has Brazil, where land has been bestowed upon railway companies in lieu of a guaranteed interest. Most of these grants have been virtual donations, even where it has been provided that the

territory be colonized; and some have not resulted in the construction of railways.

Another form of land grant not uncommon in Latin America has been that made in disputed areas along unsettled boundaries, less with the purpose of creating settlements than with the hope of establishing rights of individuals which might pass for effective occupation and thereby strengthen the claims of the grantor nation to the territory in question. The best example of this is the Chaco district, disputed by Bolivia and Paraguay. Both governments have offered large concessions and have given the map of the Chaco district the appearance of a well subdivided region. Many of the recipients of lands in this district are citizens of foreign nations, and it has perhaps been hoped that their governments would defend their rights. Inasmuch as none of the area has been surveyed and much of it not even explored, it is apparent that such grants are at present largely fictitious and that their purpose is mainly political.

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See: LAND SETTLEMENT, COLONIES; HOMESTEAD; PUBLIC DOMAIN; RAILROADS; AGRICULTURAL EDUCATION; VETERANS; AGRARIAN MOVEMENTS; LAND TENURE; NATIVE POLICY.

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LAND MORTGAGE CREDIT

AGRICULTURAL

General.....FRITZ SCHULTE

United States and Canada..... A. G. BLACK and W. G. MURRAY

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AGRICULTURAL. *General.* Land mortgage credit is a form of investment credit in which realty is pledged as security for the loan. Its function is to provide agriculture and urban real estate with long term credit. In agriculture long term credit is required in financing the purchase of

land, the construction of farm buildings and the introduction of improved methods of cultivation. Other sources of agricultural mortgage indebtedness are the settlement of inheritance claims and provisions for dowries. This form of credit, not unknown in the Middle Ages and in the period of early capitalism, acquired increasing importance in modern times, when agriculture was drawn into the orbit of capitalistic economy. It assumes additional significance because of the all important position of agriculture as a source of food supply and because of the emphasis placed upon the farming population as a particularly valuable element in the general population of the country.

The sources of farm mortgage credit fall into two major groups: the general credit agencies and the specialized mortgage credit institutions. The first comprises the individual investor, who still furnishes a substantial although a decreasing proportion of farm mortgage credit, the commercial banks, the insurance companies, the savings banks and the various endowment funds, all of which seek profitable but safe investment in farm mortgages. This group of credit agencies, once the dominant source of farm mortgage credit, still continues to furnish the greater part of it, particularly in countries like England and the United States, where specialized farm mortgage credit organization is of recent origin.

In most countries farm mortgage credit tends to concentrate in the hands of the specialized mortgage credit institutions organized in response to the growing needs for mortgage credit and adapted to meet the peculiar requirements of agricultural credit. Almost everywhere these institutions enjoy the support of the government; practically all of them are authorized to finance their loans through bond issues—a device which has proved to be a most effective means of credit mobilization. Some of these institutions confine their operations to farm mortgage credit exclusively; others grant both agricultural and urban land mortgage credit but administer the former in a separate department in view of the peculiar features of agricultural credit. In almost all countries the organization of land mortgage credit has been facilitated by the introduction of a complete system of registration of title with full information as to the nature of obligations resting on land.

An analysis of the mortgage credit institutions reveals several distinct types of organization—cooperative, governmental and private. The first in point of time as well as in importance is the cooperative association as represented by the German *Landschaft*—the prototype of cooperative credit organization. The first *Landschaft* was organized in 1770 in Silesia and was followed in the succeeding decades by similar associations in the other provinces of eastern Prussia. Their purpose was to provide credit relief to the large landowners impoverished by the Seven Years' War. They were mutual associations of the landowning nobility organized along the lines of the autonomous estates (classes) of the post-feudal society but subject to fairly vigorous control by the state, and they were authorized to issue bonds secured jointly by the mortgaged lands of the members; the valuation of the land, most minutely prescribed and standardized, was performed by designated members as an honorable duty. Loans were made in the form of bonds, which the borrower had to dispose of in the market. The system of lending bonds permitted the granting of credit whenever there was sufficient security for it without regard for conditions obtaining in the capital markets. Since the *Landschaft* provided for direct substitution of the credit of a group of large landowners for that of its individual members it was particularly effective as an aid in retaining landed property in the hands of its original holder. The rate of interest on the bonds was roughly from 3 to 4 percent, and they were almost as marketable as government securities. Nevertheless, the fluctuations in their market quotation caused frequent hardship to the borrower, which the *Landschaften* tried to relieve by establishing banks of their own to deal in bonds. The post-war credit crisis forced them to abandon the bond loan system in favor of the cash loan system, which permits a better timing of the issue to the conditions obtaining in the capital markets and greater flexibility in interest charges on individual loans and in methods of their repayment. Although essentially private institutions the *Landschaft* associations were authorized by the government to assume certain administrative functions, such, for example, as the right to institute receivership without recourse to court action in case of default in payment or of impairment of the mortgaged estate.

Originally the *Landschaft* associations restricted their membership to the landed nobility, but under the liberalizing influences of peasant emancipation in the nineteenth century some *Landschaft* associations began to extend their credit facilities also to peasants either by admit-

ting them to membership or by establishing subsidiary institutions, so-called *Landschaften für Kleingrundbesitz*, offering the peasants the same type of credit which the mother institutions offered to the noble landowner.

The *Landschaft* associations were readily transplanted to the neighboring areas where the mediaeval tradition of landed estate survived—such German states as Hanover, Mecklenburg and Brunswick, the Russian Baltic provinces, Finland, Russian Poland, Galicia and Hungary. The system, however, proved inapplicable where small and medium sized farms were the dominant form of landownership. In some of these regions, such as Saxony and Bavaria, ordinary credit cooperatives, particularly well suited to short term credit requirements, were adapted to serve the needs of long term credit as well. In Denmark there exists a vast network of such cooperatives. In Belgium the Caisse Centrale de Crédit organized by the Boerenbond is cooperative in principle. In France the large system of cooperative rural credit societies which engaged primarily in short term credit operations was authorized by the government to grant also long term loans to small farmers from public funds assigned to them for this purpose. The cooperative principle was incorporated to a limited extent in the Federal Farm Loan system in the United States. In India a number of cooperative land mortgage banks were established after 1928 at the recommendation of the Royal Commission on Agriculture.

Where small and medium sized landholdings predominate and the cooperative principle has not gained a foothold in the organization of farm mortgage credit, the function of supplying this form of credit was taken over by the state. Government assistance took the form of establishing special public credit agencies or of providing a government guaranty of the bonds issued by private institutions, the latter being subject to a high degree of public control. In Ireland the great mass of tenants have been turned into proprietors with the aid of long term credit advanced from public funds. The State Nobles' Land Bank and the Peasants' State Bank in imperial Russia furnished credit relief to the landowning nobility and facilitated the outright purchase of land by the peasantry. In the smaller states of Germany many of the institutions which were originally organized in the period of peasant emancipation for the purpose of financing the commutation of feudal charges evolved into public mortgage and savings institutions (*Landeskreditkassen*), while in the western provinces of Prussia public land banks (*Landesbanken*) grew out of credit institutions established by provincial and local governments. Public credit institutions or private companies with public guaranty exist also in Czechoslovakia, Jugoslavia, Bulgaria, Greece, Italy, Sweden, Norway, Switzerland, the principal countries of Latin America, Persia, Turkey, South Africa, New Zealand and in the states of the Commonwealth of Australia. In some of the Australian states the savings banks which had been doing general banking business, including short term farm credit, provided a starting point for the development of a long term credit system. In Austria, where the private mortgage companies succumbed to the agricultural crisis, the provincial mortgage institutions (*Landeshypothekenanstalten*) are at present the sole source of mortgage credit, agricultural as well as urban.

In advanced capitalistic countries the typical mortgage credit institution is the private mortgage company, owned and controlled by the private stockholders and operated on a profit basis. The principles underlying the operation of this type of institution—share capital, grant of long term loans on agricultural and urban land without restriction as to type of owner or locality, sale of bonds based on land mortgages in the open market—were first applied on a large scale by the Crédit Foncier of France, which was organized in 1852. Because of the monopoly privilege which it enjoyed in the first twenty-five years of its existence and the considerable financial assistance it obtained from the government during its early years the Crédit Foncier was until recently the only important mortgage credit institution in France. The private mortgage company is found in Belgium, Holland, Switzerland, Germany, Spain, Portugal, the United States and Japan. In England, where no farm mortgage credit organization existed before the World War because of peculiarities of land tenure, a private mortgage company was entrusted in 1928 with the task of providing long term credit facilities to the growing number of tenants with aspirations for farm ownership. The Agricultural Mortgage Corporation is owned by the Bank of England and the large joint stock banks, and the branches of the latter act as the local agencies of the company. This differs from the usual type of private mortgage company in that the government advanced a sum of money as a guaranty fund of the corporation. The activities of the corporation are confined to England and

Wales; no similar system has been established in Scotland.

Another type of private mortgage organization is the central mortgage bond institution affiliated with a number of savings banks. It developed chiefly in the territories of former Austria-Hungary and survived in the succession states; it also exists in Italy, where the *monti di pietà* in Turin, Milan and Siena evolved into autonomous mortgage bond institutions. This type of organization is based on the principle of separating the function of granting loans secured by mortgages from the function of the issue of bonds on the basis of the mortgages thus obtained. The underlying idea is that the granting of a loan involves intimate knowledge of the conditions of the property which is to be mortgaged and consequently requires a decentralized form of organization, while the successful floating of a bond issue depends upon the confidence of the money market in the issuing organization and is probably greater when the bonds are issued by a central institution. A limited application of this principle is found in the organization in 1873 of the Preussische Zentrallandschaft, which was authorized to issue bonds on the basis of the mortgage or bond portfolio of the member *Landschaften* without, however, abrogating the right of issue of the individual associations. This principle was also incorporated in the organization of the mortgage credit institutions of Sweden and Norway and in the mortgage banks which are common in France, Switzerland, Belgium and Holland, which are of considerable importance in the development of oversea plantations. More recently it has been applied in Switzerland, where two mortgage bond institutions, the Pfandbriefzentrale der Schweizerischen Kantonalbanken (1931) and the Pfandbriefbank Schweizerischer Hypothekeninstitute (1930), were recently established for the purpose of financing mortgage credit through the issue of long term bonds, thus supplementing the cantonal banks as well as private mortgage companies which finance their operations through debentures of intermediate maturity. The individual banks participate in the administration of the central institutions and add their guaranty to the mortgages, which are used as a basis for the bond issue.

The principle of separating the mortgage loan business from the issue of mortgage bonds was of special importance in attracting foreign capital to improverished Europe after the World War. The destruction of capital during the war and the economic disorganization in central and eastern Europe which followed the war resulted in an unusual shortage of credit facilities. This credit hunger was accentuated by the upsurge of agrarian reform with the resulting division of large estates among the landless and small peasantry, who, however, were without means of paying the required compensation or of purchasing the necessary equipment. In Germany the situation was partially remedied by the organization in 1925 of the Deutsche Rentenbank Kreditanstalt, which floated loans by means of a bond issue in the United States totaling $131,000,000 during the years 1925 to 1928 and also contracted an intermediate loan in the form of mortgage bonds bearing 7 percent interest from the Deutsche Golddiskont Bank. The proceeds of the loans were placed at the disposal of German agriculture through the various mortgage credit institutions. In countries where the open money market was unable or unwilling to furnish the funds required for the liquidation of debts and for the restoration of normal conditions the government frequently had to provide direct subsidies. Thus in 1928 France appropriated 500,000,000 francs for intermediate credit and 250,000,000 francs for long term credit to be distributed through the rural credit societies. It was but natural that the governments made use of the existing credit apparatus for the distribution of the funds supplied. Since conditions have required intervention in the field of short as well as long term credit, the rigid separation of the two forms of credit formerly customary in banking has been largely eliminated with a view to assisting the small peasant.

A new departure in providing impoverished countries with credit facilities is the projected International Agricultural Mortgage Bank under the auspices of the League of Nations. The project is advocated chiefly by France and by the southeast European countries. The institution, to be organized as a joint stock company, is to grant amortizable long term and intermediate credit to the national institutions engaged in granting farm mortgage credit in their respective countries. It is to obtain capital by issuing bonds secured in turn by the mortgage collateral of these national institutions. Although the establishment has been decided upon in principle, its actual operation has been delayed pending the ratification of the agreement by the interested governments.

Variants of land mortgage credit are credits for the purpose of facilitating certain types of

improvement and encouraging land settlement (*q. v.*). These credits are different from the usual form of farm mortgage credit in that the granting of the loan is usually conditioned upon the use to which it is to be put and the disposition of the funds is carefully supervised by the credit institution or by the government agencies. In England the organization of improvement credit dates back to the 1840's, when a series of land improvement acts was passed providing appropriations for the granting of credit for drainage. Subsequent legislation broadened the range of improvements entitled to credit grants. Since 1929 improvement credit has been administered by the Agricultural Mortgage Corporation, which is also the institution for general farm mortgage credit. The loans are granted only after a thoroughgoing investigation by the Ministry of Agriculture of the conditions of the property and the need for improvements. The obligation created on the land enjoys priority over all other claims. In Germany settlement and improvement credit has entailed the establishment of special institutions, as this form of credit could not be fitted into the general organization of farm mortgage credit. In Prussia settlement credit has been handled since 1891 by the Rentenbanken, which were consolidated into the Preussische Landesrentenbank in 1927. The latter is a public institution authorized to issue bonds. In 1924 the federal government also took over all the shares of a central institution, the Deutsche Bodenkultur A. G., which had been organized in 1923 to provide improvement credit, which was formerly taken care of by the local Kulturrentenbanken in various parts of the country. In few countries, however, are improvement and settlement credits as rigidly separated from the usual farm mortgage credit as in Germany. Legislation in recent years has tended to encourage the consolidation of settlement and improvement credit institutions with those furnishing general mortgage credit for agriculture.

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United States and Canada. Agitation for improved agricultural credit facilities in the United States has persisted since the colonial period. Early reforms growing out of the prevailing shortage of capital consisted of the establishment of land banks, public and private, which were authorized to issue bills of credit secured by land (*see* LAND BANK SCHEMES). In the early nineteenth century the rapidly developing southern states led in the establishment of private and state owned banking institutions designed to offer credit facilities to planters and farmers and authorized to finance their loans through the issue of bonds and notes. While some of these institutions provided a real stimulus to expanding agriculture, most of them were short lived and practically all succumbed to mismanagement, reckless expansion and recurrent financial panics. The early commercial banks, some of which were required to lend a percentage of their funds to agriculture, played an important role in stimulating agricultural expansion of the frontier. Commercial banks, however, proved ill adapted to supply long term credit and with the introduction of the national banking system in 1863 the national banks were prohibited from lending on real estate. Meanwhile the settlement of the middle west, the gradual exhaustion of free land, the growth of population and consequent rise of land values and the mechanization of agriculture increased the long term credit requirements of agriculture and accentuated the inadequacy of the general credit institutions. Dissatisfaction with the existing facilities and agitation for farm credit reform were general throughout the latter part of the nineteenth century and the early part of the twentieth.

The basis of the sustained agitation was the fact that the farmers, separated by long distances from the money centers, were dependent for the most part on local lenders, who because of the scarcity of capital occupied an almost monopolistic position in the credit market. Interest rates were consequently high, and the cost of credit was further increased by the expenses involved in bringing lender and borrower together and in appraising the land as well as by the short term loans running from one to five years, which necessitated frequent renewals and involved the payment of onerous renewal commissions. The loans as a rule lacked provisions for amortization; and the practise of having the entire principal of the loan come due at once proved an additional source of embarrassment to farmers, particularly when the maturities coincided with recurring periods of agricultural depression.

In response to repeated demands for action provision was made by Congress for a nation wide study of the land mortgage situation in connection with the 1890 federal census. This was the first authoritative report on the extent and distribution of farm mortgage indebtedness and gave support to the contentions of those seeking land mortgage credit reform. In 1908

President Roosevelt appointed the Country Life Commission to study farm conditions; in its report this body stressed the need for improvement in the farm credit field. In 1913 the American Commission on Agricultural Cooperation in Europe which was sponsored by southern business men and the United States Commission authorized by Congress surveyed the organization of agricultural credit and cooperation in Europe and returned with a comprehensive report. The same year witnessed the liberalization of the national banking system by federal reserve legislation which permitted national banks to advance loans on real estate to a limited extent.

The century long drive for more adequate mortgage credit facilities culminated in the passage in 1916 of the Federal Farm Loan Act, which provided for the establishment of the Federal Farm Loan system consisting of semi-cooperative Federal Land Banks and private joint stock land banks (*see* FARM LOAN SYSTEM, FEDERAL). Despite the improvement of land mortgage facilities effected by the Federal Farm Loan system the farmers of the newer agricultural areas felt that these facilities were inadequate. Farm mortgage institutions patterned after the Federal Farm Loan system were organized in three states. In 1917 a law was passed in South Dakota providing for a state farm mortgage bank; a similar law was enacted in North Dakota in 1919 and in Minnesota in 1923. Funds were obtained by the sale of bonds secured by farm mortgages but guaranteed by the state. These states have found mortgage lending unsatisfactory because of a combination of incompetency, political pressure, unprosperous agricultural conditions and, in the case of South Dakota, fraudulent practises. None of these state systems is now actively lending funds. Many states have provided that school and other trust funds be loaned upon land mortgage security.

Farm mortgage indebtedness in the United States increased until 1928. The census of 1890 shows that the mortgage debt in force on acres and not on lots was $1,292,000,000 in 1880 and $2,209,000,000 in 1890. Recent estimates list the total farm mortgage debt at $3,320,000,000 in 1910, $7,857,700,000 in 1920, $9,468,526,000 in 1928 and $9,241,390,000 in 1930. The ratio of indebtedness to the total value of farm lands and buildings was 9.5 percent in 1910 and 11.8 in 1920. The average rate of interest on outstanding loans in 1920 was 6.1 percent, ranging from 5.1 percent in New Hampshire to 7.8 percent in Arkansas. In recent years there has been a tendency toward lower and more equal rates. The large increase in indebtedness between 1910 and 1920 resulted from the rise of land values, which was accompanied by a more than ordinary amount of land purchase activity. The fact that the debt was larger in 1930 than in 1920 is particularly depressing in view of the marked decline in the value of land during this decade. This has meant the loss to many farm owners of whatever equity they may have had in their land. While statistics as to the percentage of farms mortgaged are not complete, there is evidence to show that such farms increased between 1910 and 1930. The expansion in the debt in these years, however, has been chiefly the result of heavier loans per acre with only a minor addition arising from the mortgaging of land previously debt free.

Much of the farm mortgage credit needed by agriculture in its westward movement across the continent was furnished by former owners, who usually granted the purchaser an extension of time on a portion of the purchase sum and took a mortgage on the farm as security. In the 1880's and early 1890's there was a considerable growth of farm mortgage companies. These agencies were created to satisfy the demand of investors in eastern states for farm mortgages from the agricultural states of the middle west. Instances of 10 percent interest to the investor and 10 percent commission to the mortgage company negotiating the loan provided the necessary stimulus for this development. The business was overdone, however, and the depression of the middle 1890's caused many companies to fail. With the turn of the century insurance companies came into prominence as a source of farm mortgage credit. According to reports concerning companies with over 90 percent of the assets of all legal reserve companies they had $268,658,000 invested in farm mortgages in 1906, $1,085,966,000 in 1920 and $1,916,000,000 in 1929. An estimate for all companies in 1929 is $2,000,000,000. From 1920 to 1928 the rise in farm mortgage holdings of insurance companies represented a shift of previously incurred mortgage debt from individuals and banks to insurance companies.

According to a recent study by the United States Department of Agriculture insurance companies held 22.9 percent of the total debt on January 1, 1928, individual investors 15.4 percent, Federal Land Banks 12.1 percent, commercial banks 10.8 percent, retired farmers 10.6

percent, mortgage companies 10.4 percent, joint stock land banks 7 percent and a miscellaneous group the remainder. One reason cited for the large holdings of insurance companies is their preference for mortgages on middle western properties, which are above the average in size because of the higher land values in that region. Individuals and commercial banks are the largest farm mortgage lenders in the north Atlantic coast region and along the Pacific coast.

In Canada the organization of farm mortgage credit followed essentially the same lines of development as in the United States. Private investors and former owners have probably been the holders of the largest amount of farm mortgages, although the precise amount of such holdings is not known. Since as early as 1841 chartered banks were prohibited from making loans on real estate security, loan companies developed to supply the demand for credit on farm and urban real estate. The first incorporated loan company was established in 1844, and special legislation was enacted in 1846 to encourage the formation of such companies. Complete data on the operations of these companies are not available, but a report for 1929 lists their total assets at $206,596,109. Sales of debentures and savings deposits provide these companies with funds to lend on mortgage security. Life insurance companies also are an important source of farm mortgage credit; in 1930 the Department of Agriculture of Canada estimated the amount of farm mortgages held by them at $74,000,000.

As in the United States there were urgent demands in Canada for more adequate farm mortgage credit. The first successful legislation to provide additional mortgage credit was enacted in the provinces of New Brunswick and Nova Scotia in 1912. These acts aimed at encouraging the settlement of land, and one of their features was the provision for purchase of vacant farms and their sale on credit to farmers. By 1917 six provinces had established systems of farm mortgage credit, Quebec and Ontario being the only two provinces without state agencies. From 1912 to 1931 a total of 22,168 loans, amounting to $66,550,000, was made by the six provincial systems. Ontario's farm loan bank took the lead with 11,775 loans aggregating $43,113,000, followed by Saskatchewan with 5673 loans amounting to $14,455,000. These provincial loan banks with long term amortized loans resemble in many respects the Federal Farm Loan system in the United States.

In 1927 a dominion system of farm mortgage credit was provided for by law, and in 1929 the Canadian Farm Loan Board was organized to administer the act. The dominion government subscribed an initial capital sum of $5,000,000 free from interest for three years but subject to a rate of 5 percent after the expiration of that period. By March 31, 1931, a total of 3423 loans in six provinces had been approved for an aggregate of $7,563,650. The dominion system now operates in the following provinces listed in the order of the number of loans made: Alberta, Quebec, British Columbia, New Brunswick, Nova Scotia and Manitoba. With the exception of that of New Brunswick provincial systems ceased operations when the dominion board commenced lending. Loans are amortized over a period of twenty-three or thirty-two years, and funds are obtained by issuing bonds. The interest rate on loans is based on the amount needed to pay interest on the bonds and to cover the costs of administration.

Of all the handicaps agriculture has met in developing a satisfactory farm mortgage system the problem of defaults arising from extreme variations in farm income has remained, at least in part, unsolved. Each depression period results in the bankruptcy of many farmers who have undertaken ownership and are forced back into tenancy. In the 1870's and the 1890's and again in the agricultural crisis after the World War prices of farm products dropped to unusually low levels and the number of foreclosures of farms increased. The United States Department of Agriculture has estimated that for the period 1926 to 1931 foreclosures and defaults exclusive of sales for taxes amounted to an annual average of seventeen out of every thousand farms in the country. Research in the field of land appraisal has thus far not thrown much light on the best means of safeguarding farm loans from the necessity of foreclosure. The common policy of lending 50 percent of the appraised value is not a solution because of the erratic fluctuations in farm income and farm values. The frequent failure to recognize the temporary character of boom values of agricultural land and products saddles the farmer with a burden of indebtedness which he is in no position to throw off when the pendulum swings in the other direction. While the problem of agricultural indebtedness is a phase of the general problem of the crushing effects of deflation on the status of the debtor, the application of more careful appraisal methods based on earning capacity over periods long enough to include both high and low levels of farm income

would mitigate considerably the severity of the foreclosure epidemics which attack agriculture.

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URBAN. As in agriculture the long term credit needs of urban real estate were originally supplied by individual investors, commercial banks and general investment institutions. With the rapid industrial development of the nineteenth century, accompanied as it was by growing urbanization, the credit needs of real estate expanded enormously, leading to the early establishment of special credit institutions designed primarily to meet the peculiarities of urban land mortgage credit. These institutions, which developed first in Europe, particularly in France and Germany, are now found in most countries. They fall into three main groups: those owned and controlled by the national or local governments, those operating on a cooperative basis and those owned by individual stockholders and operated for private profit.

Mortgage institutions of the first group are usually engaged in granting urban as well as rural mortgage credits and their operation is entirely in the hands of the government; the State Mortgage Bank of Jugoslavia is a good example of this type. While the bonds are the direct obligations of a specific institution secured by first mortgages they are as a rule unconditionally guaranteed as to principal and interest by the government. Some institutions of the second group are concerned primarily with the financing of rural mortgages, while others, such as the *Stadtschaften* in Germany, engage exclusively in urban real estate financing. The *Stadtschaften* are mutual associations of owners of real estate patterned somewhat after the *Landschaften*; they grant mortgage loans to their members only on urban property used for residential purposes. On the basis of these mortgages they issue their own bonds, which were formerly turned over to the borrower; but since this method often involved selling the bonds at a discount and thus depressing their value it has been abandoned in favor of the cash loan principle. In 1922 the local *Stadtschaften* in Prussia organized the Preussische Zentralstadtschaft in order to standardize and centralize the bond issue and thereby enhance the attractiveness of this form of investment. The actual lending is still in the hands of the local *Stadtschaften*, but the central organization has the sole right to issue bonds secured by the mortgages of the local institutions, among which they are then distributed. Any *Stadtschaft* is allowed to join the central organization, whose membership has increased considerably since 1926. The *Stadtschaften* operate under close government supervision, and their bonds are usually guaranteed by local or municipal government. Cooperative mortgage banks are often affiliated with a central mortgage bank, to which they may turn over their bonds. The central mortgage bank then issues and sells its own bonds, which are secured by those of the cooperative banks. The private mortgage banks, constituting the third group, engage chiefly in financing urban real estate and exist in practically every capitalist country, although the degree of government supervision differs. The best known privately owned mortgage bank is the Crédit Foncier of France.

The underlying principle of long term mortgage banking credit is the same in every type of institution. It involves the pooling of individual mortgages by a mortgage bank and the issuance by the latter of bonds secured by these mortgages. The bonds are at the same time the direct obligations of the institution. The advantages offered by such an institution are obvious. If the mortgage were to be turned over to an individual, he would have to carry the entire amount. Through the issue of mortgage bonds the amount is split up into smaller units and distributed to a large group of investors. Furthermore the security of the bonds is based not on one but on many properties, so that the risk is diversified and the credit standing of the bonds improved. Since bonds of mortgage banks, particularly in Europe, are listed on the leading stock exchanges they find a ready market among investors, institutional as well as private. The development of mortgage banks has therefore tended to attract considerable amounts of capital to the financing of real estate which could otherwise not have been obtained. As a matter of fact bonds of mortgage banks, urban as well as rural, were considered before the World War as first class investments and were freely used for the investment of trust funds; such bonds were sold in many countries even at a lower yield than government obligations.

The operation of the three types of mortgage banks described is essentially the same. The bonds in most cases are secured by first mortgages on urban real estate usually representing between $33\frac{1}{3}$ and $66\frac{2}{3}$ percent of the appraised value of the land. In some countries the appraisal is left to the individual institution, while in others

it is under government supervision and carried out by specially appointed appraisers. In most countries, however, the evaluation of the property is regulated by law. Bonds of mortgage banks operating on a cooperative basis are at times the joint and several liability of the individual members of the bank, although in recent years there has been a general tendency to eliminate such liability on the part of the members. Bonds of all types of mortgage banks in Europe always carry amortization clauses which provide for the payment of a semi-annual or annual sinking fund large enough to retire the entire loan during a period ranging from thirty to forty years, although the Crédit Foncier of France may make loans for a period of seventy-five years.

From their early stages mortgage banks in Europe have been under government supervision, primarily in order to protect the bondholders and to facilitate the flow of capital into urban and rural mortgages. Government supervision applies not merely to government owned and cooperative institutions which operate under special laws but also to private corporations which are owned by stockholders and operate chiefly for profit. In Germany the organization and any change in the regulation of a private mortgage bank operating throughout the Reich must be approved by the Reichsrat. If the business of the mortgage bank is restricted to one state, the changes must be approved by the authorities of that state. Each mortgage bank has a trustee appointed by the supervisory authorities, whose function is to see that the mortgages which form the security for the bonds are equal in amount to the bonds issued. The trustee is authorized to examine the books and records of the banks and to obtain as much information as he desires.

In most countries of Europe the foreclosure proceedings in case of default by the borrower have been greatly simplified, thus adding considerably to the security of the bonds. The records of the mortgage bank usually constitute the only necessary legal evidence of the debt, and the court upon determining the authenticity of such records must render judgment in favor of the bank and order the sale of the property. Where mortgage banks are closely supervised by the government, as in Germany and the Scandinavian countries, mortgage banks have operated successfully without loss to investors and before the World War were able to furnish capital for real estate purposes at a comparatively low cost.

The cost of borrowing from government owned and cooperative institutions is not high and depends entirely upon the status of the capital market. Thus in post-war years the yield on mortgage bonds in Germany was almost twice as high as before the war. The spread between the rate of interest charged the borrower by these institutions and the rate of interest to the bondholder is between $\frac{1}{2}$ to 1 percent, this difference being used to meet the overhead expense of the mortgage bank and to build up statutory reserve funds. In some cases the bonds issued by mortgage banks operating on a cooperative basis bear the same rate of interest as the mortgages by which they are secured, the members contributing usually $\frac{1}{2}$ percent per annum to defray costs of administration. Similarly in most European countries the rate of interest which the borrowers pay to private mortgage banks has a definite relationship to the rate which the bonds bear and is usually about $\frac{1}{2}$ to 1 percent higher.

Most mortgage banks in Europe are engaged primarily in the granting of first mortgages. It is expected that the difference between the amount of the first mortgage and the cost of the building will be borne by the entrepreneur or by the owner of the building. Second mortgages are generally not handled by cooperative institutions or by institutions whose bonds are unconditionally guaranteed by the government. In some countries, however, as for example, in Denmark, the *hypothekforeninger* (mortgage associations) engage exclusively in lending on second mortgages. In Germany many *Stadtschaften* are authorized to lend on second mortgages up to 80 percent of the value of the property. Private mortgage banks are in some instances permitted by law to engage in the granting of loans on second mortgages.

In the United States unlike most European countries urban real estate mortgage credit is not concentrated in the hands of specialized institutions but is carried out by different types of organizations. Most prominent among these are: title and guaranty companies, mortgage and bond companies, building and loan associations, insurance companies, savings banks, commercial banks and charitable and educational institutions. Only the first three specialize in the granting of mortgage loans on urban real estate. Title companies operate along the same lines as private mortgage banks in Europe; they grant loans only on first mortgages and sell them or the bonds based on the mortgages with their

own guaranty. They are under state supervision, and their operations have been conservative. Mortgage and bond companies which do not guarantee the mortgages and bonds sold by them have at times been careless in their appraisal of properties and the consequent losses sustained by investors have been staggering. With the exception of mortgage and bond institutions and investment houses practically all other types of institutions engage primarily in the lending of first mortgage loans. With the exception of the building and loan association all other institutions operate chiefly for private profit; hence the cost of real estate financing is higher in the United States than is warranted by the prevailing conditions in the capital market, comparing unfavorably with that of countries like France and Switzerland. Moreover the cost of mortgage financing is not uniform because of the various charges and commissions paid to mortgage brokers and others. The business of lending on second mortgages, which is much more in vogue in the United States perhaps than in any other country, is left to individuals and mortgage institutions. The cost of placing second mortgages in the United States is exorbitant. While the nominal rate of interest is comparatively low, the special charges and bonuses which have to be paid by borrowers bring the cost up to from 10 to 15 percent and often more.

The urban mortgage credit system in the United States is marked by a lack of concentration and specialization, a lack of amortization provisions and the absence of government supervision. The non-existence of central institutions ready to discount mortgages and mortgage bonds has made the latter a less marketable and consequently a less attractive investment in the United States than in other countries. This becomes particularly evident in times of depression, when holders of mortgages, such as commercial banks, savings banks and insurance companies, are unable to convert their mortgages into cash. Although in recent years a Real Estate Security Exchange has been established in New York, its operations are limited and comprise few securities. The fact that in most cases the mortgages run only for a period of from three to five years without amortization provisions makes it often difficult, particularly in times of falling real estate values, to renew the mortgages at the outstanding amount, thus resulting often in foreclosures and in loss of the equity of the owners. Finally, the absence of government supervision frequently invites unscrupulous practises on the part of mortgage institutions. The unprincipled method of appraising the property at a rate higher than the actual market value has frequently resulted in heavy losses to investors and has brought certain real estate mortgage bonds into disrepute. All these factors obviously add to the cost of urban real estate financing.

The weakness of the urban mortgage credit system in the United States has again been evidenced in the business depression following the autumn of 1929. The decline of business activity was accompanied by a sharp reduction in real estate values and rentals. These factors coupled with the unsound practises of some mortgage companies, especially of those which did not guarantee the mortgage bonds distributed by them, resulted in a large number of defaults of such bonds. While accurate statistics on the total amount of urban real estate mortgages and mortgage bonds are not available, the National Association of Real Estate Boards has estimated that out of $18,000,000,000 in real estate mortgages outstanding in this country more than $4,000,000,000 was in default. Other estimates would place the total value of outstanding mortgages as high as $25,000,000,000 and the defaults proportionately larger. A departure from the usual practise of forming separate committees for the purpose of reorganizing the capitalization of a property whenever the bonds of such property have gone into default is offered by the formation, among others, of the General Committee for the Protection of Real Estate Bondholders in 1932, composed of persons who have had no connection with the marketing of such securities. Although the committee's aim is primarily to safeguard the interest of the holders of mortgage bonds distributed by S. W. Straus and Company, the largest company of its kind, it may at its discretion accept deposits of other securities. The work of the committee, manned by an independent and disinterested group of nationally known citizens, will include an investigation into the conditions under which the bonds have defaulted and may lead to sounder practises in the issue and distribution of real estate bonds.

The partial collapse of the real estate market during the depression has brought into sharp relief the need for a thorough overhauling of the urban mortgage credit system in the United States. The National Association of Real Estate Boards has recommended the creation of a Central Urban Mortgage Rediscount Corporation, to be patterned after the systems prevailing in Europe. The passage of the Federal Home Loan

Bank Act in 1932 marks a more concrete step in the direction of an organized urban mortgage crédit system. The act calls for the establishment of an independent system of eight to twelve Federal Home Loan Banks to operate under the supervision of the Federal Home Loan Bank Board. The banks, whose original minimum capital of $134,000,000 is to be subscribed temporarily in part by the Treasury, are to offer rediscount facilities to building and loan associations, savings banks and other institutions engaged in the granting of mortgage loans on urban real estate. This law limits the rediscount facilities of its members to mortgages on real estate, the value of which does not exceed $20,000. If the mortgage runs for more than eight years then the advance made by a Home Loan Bank to a member may be up to 60 percent of the unpaid amount of the mortgage; if for less than eight years, then only to 50 percent. In the first case, the advance may not exceed 40 percent of the appraised value of the property mortgaged; in the latter case, 30 percent. While this legislation is a step in the right direction, its effectiveness will obviously be limited to a fraction of the urban mortgage business. The application of similar measures of centralization, coordination and government supervision to the vast field of industrial and commercial real estate finance would contribute greatly to the stability of the industry.

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See: CREDIT; AGRICULTURAL CREDIT; CREDIT COOPERATION; FARM LOAN SYSTEM, FEDERAL; BUILDING AND LOAN ASSOCIATIONS; FINANCIAL ORGANIZATION; INVESTMENT; LAND VALUATION; REAL ESTATE; MORTGAGE; HOUSING; HOME OWNERSHIP; LAND SETTLEMENT; LAND BANK SCHEMES.

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LAND NATIONALIZATION. *See* SOCIALIZATION; SINGLE TAX.

LAND REFORM. *See* SOCIALIZATION; UNEARNED INCREMENT; SINGLE TAX.

LAND REGISTRATION. *See* LAND TRANSFER.

LAND SETTLEMENT. The entire course of human history has been essentially one of struggle for dominion over the earth's surface. Even in earliest times primitive man migrated to new

areas, lured by the spoils of conquest or the larger opportunities of unoccupied territory. Land was a common possession of the particular tribe or people which for the moment held dominion over it. Where the route of human migrations can be followed there is usually disclosed a well defined movement from east to west. Thus the center of civilization shifted throughout the centuries, slowly but steadily, from Asia to the shores of the Mediterranean and the Atlantic. This movement was halted temporarily by the ocean barriers, until Portuguese, Spanish and English seafarers revealed to an awakening Europe the existence of theretofore undreamed of continents. The area of land thus made available for colonization was so vast that the question of ownership and settlement became a world problem. The fact that all these lands were already peopled, owned and used in a manner suited to the primitive life and habits of the aborigines was wholly ignored. Ownership by right of discovery was asserted as a guiding principle, and this placed in the hands of the rulers and governing classes a new source of potential wealth and power.

In the nineteenth century a new and potent influence began to assert itself, as a result of which land settlement largely ceased to be a political factor in civilization and became more and more an economic and social one. This influence comprised the manifold and marvelous discoveries in science and their application to industry. The first result of these discoveries was to enhance the comforts and enjoyments of life and multiply the desires of man. This created new industries and new fields for labor. The intelligent and aspiring were migrating. What could be done to make life on the land sufficiently appealing to hold its people who would be not only good farmers but supporters and directors of those things which make for stable government and attractive life? The effort to meet these needs has brought about the greatest agrarian advance in all history.

In widely separated countries of Europe, North and South America and Australia this type of land settlement was not dealt with as a public matter until it became manifest that nonresident ownership and tenant cultivation were dangerous sources of social and political unrest and constituted a threat to national security. In Europe the peasant who wanted to own his farm but was unable to do so because of laws which were an inheritance from the past was leaving for the city or for other countries where land was cheap or the conditions of purchase favorable. So many of the people in the rural districts were migrating and so many of those who remained were restless and discontented that some means of changing conditions was essential to national efficiency if not to national survival. On the other hand, in the new lands of Australia and Canada, for example, agrarian settlement had proved to be disappointingly slow because of such natural obstacles as insufficient rainfall and because of inadequate credit, marketing and transport facilities.

The result in the last quarter of the nineteenth century was the evolution of a system of directed land settlement or internal colonization. In lands on the pioneer fringe which had not yet been broken to the plow as well as in countries where the cultivation of the soil had had a continuous history there developed a series of governmental policies aiming at permanent settlement and redistribution of agricultural lands. These public programs while varying in detail have had certain essential characteristics common to all the countries in which they have been adopted. First, there was usually to be found a provision for enabling farmers to enter into possession of land with only a nominal payment, thus leaving the greater part of their own funds available to pay for improvements and equipment. Second, there was created an organization, either state controlled or operated by public utility bodies, to make the necessary improvements, such as the erection of houses and farm buildings, the leveling and ditching of irrigated land and the furnishing of practical superintendence over the farming operations of beginners to prevent costly delays and mistakes. Third, the period of payments by landholders was made extensive enough to enable them to earn from the soil the principal and interest on their loans. The settler moreover was extended credit at low rates of interest to enable him to improve the land. Fourth, there were placed at the service of the farmers experts who were fully informed regarding markets and marketing methods, prices of farm equipment and farming operations in the locality. These experts were to give practical counsel to inexperienced beginners or immigrants from other countries as to what crops to plant, when and how to cultivate or where and how to market.

This type of state aided settlement has with few exceptions been remarkably successful. Inaugurated to persuade men who had industry and thrift and little else to become landowners,

it has made so strong an appeal to the aspirations of these settlers and the conditions of payment have been so well adjusted to the profits of agriculture that in nearly all countries it has been self-supporting and in some cases has earned a profit. At the same time it has revolutionized rural conditions.

The days of the pioneer of course are not yet completely over. Even today hundreds of thousands of families with no encouragement other than the promise of free land and with little resources beyond their personal belongings are annually pushing out the frontiers of settlement. In the words of Isaiah Bowman (*The Pioneer Fringe*, p. 2–3): "The pioneers of today include millions of Chinese, hundreds of thousands a year, on the move . . . to reach the edge of settlement in Manchuria; remote Scotch, Welsh and English sheep herders, and equally isolated farmers, living in the belt of grassland along the eastern foot of the Patagonian Andes; tens of thousands of settlers of many sects and nationalities in the Canadian northwest . . . ; Dukhobors, Hutterians and Mennonites; Australians . . . on the endless grasslands of their sunbaked continent; Boers and Englishmen and Portuguese in southern Africa, on the dry veldt and the cooler tropical highlands as well as in the rich hot valleys . . . where there is a reservoir of cheap black labor; Russian cart trains trailing into the plains of western Siberia and the Steppe Region and shoving the untamed Kirghiz nomads before them or persuading them to accept the servitude of the plow as they turn virgin grasslands into grainfields." But in those regions where an understanding public agricultural policy prevails planning has been substituted for chaotic individual enterprise, the personal risk of the new settlers to a large extent has been eliminated, and the result has been a policy of land settlement calculated to benefit the tiller of the soil and to strengthen the economic and social institutions of the states themselves. Nowhere is this better demonstrated than in Denmark, which was the first nation in modern times to develop a complete program of internal colonization. The case of Denmark vividly illustrates the changes which can be effected in a national economy by helping men to own farms, by expert guidance of farm operations and by the creation of agencies for the marketing of farm surpluses.

In the last quarter of the nineteenth century Denmark, whose territory had been radically contracted by the separation first of Norway and then of Schleswig-Holstein, appeared to be threatened with national bankruptcy. Farm laborers were discontented and moving into the cities; men with some capital were abandoning their farms and migrating to America and Australia; owners of land in many cases found it impossible to hire cultivators. To check the migration of laborers therefore there was passed in 1899 the Danish Closer Settlement Act, whose chief purpose was the formation of allotments and small holdings in order to give the modest tillers of the soil the independence and sense of security which would come from owning their own homes and to improve their income by giving the family sufficient land to grow the foodstuffs needed for its own table. This first statute was limited in its operations to a period of five years, and the area of land which could be acquired by any individual varied from less than a single acre to 20 acres. The farms for the first experiment came from the cutting up of state lands. Small as was the holding, it was necessary to have a system of credit which would make possible the erection of homes and the stocking of barnyards. The law therefore extended state credits to the landholders up to a maximum of $1100. Under succeeding laws the maximum loan was raised to approximately $4500, while the limit of 20 acres in the first act was originally raised to 30 acres and finally in 1909 was removed altogether. The result was the transformation of what had originally been a scheme for the encouragement of agricultural laborers' holdings into a complete program for internal colonization.

In the beginning laborers showed considerable reluctance to take advantage of the small holdings act, fearing that this was merely a device of the proprietors to tie them to the land. But before the end of the first five-year period the earnings from these small tracts of land were so sizable that many who had accepted the farm as a laborer's allotment were able to give their entire time to its cultivation and so become independent cultivators. At the end of the five-year period the law was renewed. This process of renewing the experiment every five years has gone on, until today all the holdings are classified as farms.

Under the succeeding statutes the law has been liberalized to permit not only agricultural laborers to become small holders but also all those who live by agricultural work. Applicants must be of Danish nationality, must be at least twenty-five and not more than fifty years of age

and must have had not less than four years' farming experience after reaching the age of seventeen. The land selected by the prospective applicant must not exceed $5800 in value, including the estimated value of the dwelling house, the livestock and the movables. The cost of buildings must not exceed $3050. The state advances nine tenths of the value of the property and the settler cannot obtain loans on more than one piece of property. The prospective settler must have available capital amounting to at least one tenth of the value of the holding which he wishes to acquire; he must reside on the land and cultivate it according to the system ordinarily adopted and he must be supplied with the necessary equipment and livestock. The dwelling house, livestock and equipment are to be insured against fire in a company recognized by the state. A part of the loan for the establishment of buildings, up to a maximum of $830, is free of interest. The interest rate is fixed at 4½ percent. No part of the capital is repaid in the first five years, but after this initial period annual payments are to be made of 1 percent of the loans for buildings and 4½ percent of that part of the building loan on which interest is paid, until the loan has been repaid. Thereafter the annual payment is 5½ percent of the loan for the acquisition of land until the whole amount is paid off. The land is acquired by purchase on the favorable terms indicated, subject to the following restrictions until such time as the payment of all that is due the state has been completed: first, the holding must not be subdivided without the authorization of the Ministry of Agriculture; second, the holding cannot be transferred to third parties except to sons or sons-in-law of the holder; third, on the death of the holder the widow is permitted to continue to occupy the holding subject to the due fulfilment of the conditions laid down.

In this fashion the number of agricultural holdings established by direct public support from 1899 until the end of the 1920's was about 18,000, or nearly 10 percent of all the holdings in the rural districts and considerably more than 10 percent of the number of holdings which are capable of supporting a family. The total loans and grants made by the state have been in excess of 140,000,000 crowns (1 crown = $.268). Because of this farsighted legislation Denmark has become a land of home owners instead of tenant farmers. Today more than 90 percent of the people own the land which they farm. Here the small farms predominate, about 100,000 of the 205,000 farms averaging 50 acres in size and another 100,000 averaging about 20 acres. One of the results of this policy of making tenant cultivators farm owners has been the development of cooperation and the creation of local manufacturing industries. Cooperation cannot flourish where tenancy prevails. It must have as a basis security and permanence of ownership. The cooperatives of Denmark have established a reputation for the excellence of their products and a perfection in marketing methods that enables them to compete in dairy products and bacon in the markets of the world.

In Germany as in Denmark internal colonization and closer settlement under state aid had their origin largely in the exodus of dissatisfied tenants, laborers and cultivators and their migration to the cities and to other countries. There operated in Germany as well the additional motive of nationalism; that is to say, the desire to Germanize the two eastern provinces of West Prussia and Posen, where the large estates were concentrated in the hands of Polish proprietors. In 1886 therefore a home settlement commission was established for the purpose of encouraging internal colonization in the two provinces. The large Polish proprietors were deeply in debt and their land was available for purchase at low rates, thus offering an exceptional opportunity for the settlement of German laborers and peasants. The law placed at the disposal of the commission a fund of $24,000,000, which was increased from time to time until by the end of the World War more than $400,000,000 had been spent in this movement. The commission selected the landed estates answering as nearly as possible the principal requirements of future settlers; bought the land; improved the property so as to prepare it for cultivation in small holdings; organized communities, schools and other civic agencies necessary in the foundation of new settlements; placed the settlers on the land; and supervised the development of the colonies. By 1918, when the commission wound up its affairs, it had succeeded in placing on the land in the two eastern provinces a total of 21,749 settlers on 765,530 acres, the average holding being 35.2 acres.

The aid of the best agricultural and economic minds was enlisted to work out for each colony a plan of development that would make the most of soils, crops and conditions. Settlers were required to have some capital, but the greater part of the money needed to improve and equip these farms so that they could be handled to obtain

the best results was provided by the government. The settler was given fifty years' time in which to pay for his farm with a low rate of interest. So long as he met these payments he had a security of tenure equivalent to ownership.

The settlement commission on principle required that the small holders have the capital to pay for the necessary buildings, livestock and implements. In case the settler's capital was insufficient the commission usually granted loans up to one half the amount possessed by the settler, at 3½ percent for twenty and one half years, including interest and amortization. Without making the settlers feel themselves pensioners of the state the commission protected them against calamities and aided them in many ways. For example, it provided them with breeding stock, encouraged the cultivation of fruit trees, assisted in the formation of cooperative societies and fostered agricultural education.

It should not be inferred that this land settlement policy was launched only for the colonization of the Polish speaking provinces. The program was extended to include also the other provinces of Prussia, first by means of the enactment of the so-called *Rentengut* (rent-purchase holding) legislation of 1890–91; then by the creation, beginning with 1903, of public utility settlement societies; and finally by the establishment of the *Rentenbanken* (rent banks which acted as intermediaries between the former owners and the new settlers). The public utility settlement societies, which were organized as limited liability companies, took over the execution of the land settlement programs and in time were to be found functioning in all the Prussian provinces. Because of their credit mobility and their intimate familiarity with local situations they were very successful; in the whole of Prussia, from 1886 to 1919, 2,342,404.7 acres of land were acquired for settlement, of which 1,403,125.5 acres were distributed in the form of leaseholds among 45,530 settlers.

The passage of the Federal Land Settlement Law of 1919 indicated that republican Germany meant to push vigorously the same program. Taking a leaf from the Prussian pre-war experiences the new code called for the centering of settlement projects in the activities of the public utility societies. These bodies were empowered for purposes of settlement to take over at the expiration of their leases all leased state lands and uncultivated moors or other waste lands and to purchase agricultural areas in their districts in excess of 25 hectares (61.75 acres). The large estates and not the state domains, however, were to serve as the chief source for additional lands. The states were to acquire areas for settlement chiefly by preemption, but the right of expropriation was provided for in those districts in which properties over 100 hectares (247 acres) made up more than 10 percent of the area available for cultivation. For a time the program worked well, but the period of inflation destroyed the capital structure of the public utility societies and hence put an end to the creation of new settlements. In 1926 therefore the federal government was compelled to assume the financing of land settlement projects and voted an annual credit of 50,000,000 marks for five years. This step revived the process of internal colonization in the country. In all in the post-war period and up to 1929 some 50,720 new independent farms had been created, of which 12,330 were new settlements and 38,390 enlargements of small farms (each in excess of 25 hectares).

In Spain beginning with 1907 directed internal colonization became a recognized public policy, chiefly at first on the basis of the utilization of state lands and then later by the breaking up of large estates. The motives and the methods employed were to a marked extent similar to those of Denmark and Germany; between 1908 and 1926 there were founded 18 settlements with 1672 small holders located on 11,028 hectares of land. In 1927 a royal decree reorganized the central body responsible for rural settlement placing authority in the hands of the General Directorate of Agricultural Social Questions. The purposes of the edict were to establish as many small holdings as possible by a division of the land, to grant parcels to cultivators who possessed little or no capital and who were prepared to farm the land themselves and to provide for tenant farmers opportunities to become the owners of the plots they tilled. Settlers were to receive state credits on the basis of long term loans of twenty-five years, an initial payment of only 20 percent of the value of the holding being required. These liberal provisions were quickly taken advantage of so that even before the revolution there were in evidence many signs to indicate that a profound change was taking place in the agricultural organization of the country. Not only were the large estates being broken up and the small landholders growing in size and confidence, but the easy agrarian credits were making possible the relaxation of the centuries old dominance of the landed proprietors and the money lenders.

In post-war Europe generally the same ferment was at work. Austria and Hungary, for example, followed in the footsteps of Germany in exercising the rights of preemption and expropriation of large properties and in making possible the creation of small holdings through the extension of state credits. In Hungary state settlers received the amount necessary for the purchase of breeding stock, interest free and repayable over a four-year period. Loans for the purchase of seed grain were to be advanced for one year without interest, while young fruit trees and grape shoots were distributed free. The purchase price of the land was to be repaid in forty years at 4 percent interest. In Czechoslovakia, Poland, Rumania and Lithuania large scale owners were suppressed out of hand, these countries going so far as to fix maximum areas for individual holdings. In Czechoslovakia a single proprietor might not possess more than 150 hectares of cultivated land; in Poland the maximum for individual estates ranged from 60 to 180 hectares, based on the type of land held. In Estonia and Latvia the land laws made expropriation compulsory in the cases of certain classes of proprietors. In Estonia settlers might lease their holdings or buy the freehold at a reasonable price and have the privilege of obtaining expropriated implements or stock at special prices. Building loans on very easy terms were made available also. In Finland all landless persons were to be entitled to an allotment of 60 acres. In Italy special loans were granted for the construction or repair of houses, farm buildings and farm roads and for the purpose of supplying water for irrigation as well as for other works of permanent land improvement. Such credits were to be repaid in forty-five years, the interest rate being but 2½ percent. In Switzerland government subsidies made possible the establishment of settlements in sparsely populated and reclaimed areas, the state erecting buildings without cost to the settlers. Thus all over continental Europe estates were being broken up and a program of internal colonization inaugurated whose keystone was the creation of small holdings adequate in size to employ the full time of the settler and his family.

In czarist Russia the end of the nineteenth century had seen the appearance of an integrated governmental program of land colonization. In addition to the military, convict and forced settlements in Siberia efforts were made to encourage the creation of peasant holdings and with the establishment of the Peasants' Land Bank financed by the state loans under extremely favorable conditions became available. It remained for the October revolution, however, with its underlying thesis of nationalization of the land to break up the old serf system completely and make possible the inauguration of a program of land colonization on a general basis. From 1924 on, as V. P. Voshchinin has pointed out (American Geographical Society, *Pioneer Settlement*, p. 266–69), the processes of migration and colonization in Soviet Russia became stabilized with the following concepts serving as the guiding principles. First, the free movement of Russian peoples was to be discouraged and mass colonization substituted on the basis of complete technical planning previous to settlement. Second, no migrations were to take place unless their purposes were "in keeping with the interest of the region to be colonized and unless the natives there are already provided for." The federal government had at its disposal certain land reserves, notably in the administrative divisions of the Siberian area, the Far Eastern Region and Kazakstan and in northern European Russia, to which migrations were to be directed; similarly each autonomous national republic was to have its own land reserve and each province its local land fund for the purpose of settling colonists. Third, colonization was to be considered "as a certain, *scientifically based* system of means to an end. . . . Therefore, the greatest care is taken in the preparation of the organization plans for the development of each region designed for colonization. . . ." Fourth, "the principle of freedom and voluntary decision in migration remains valid as before for every citizen of the U. S. S. R., but . . . only collective migration is assured all possible help from the state." Some of the benefits extended to such settlers were reduced fares, complete exemption from all taxes during the first three years of settlement and the extension of credits ranging from 400 to 600 rubles.

In Great Britain the same procedure of settling small landholders with governmental assistance, beginning first in the case of Ireland, following in Scotland and then extending to England and Wales, was taking place. The beneficial results of this policy were particularly marked in Ireland. Until the close of the eighteenth century Ireland had been a pastoral country. But the elimination in 1806 of all restrictions on the grain trade between England and Ireland, the abolition of the English corn laws and the growth of the population of England brought

about a rise in the prices of agricultural products and converted Ireland into a cultivated country. At the same time the increase in the population of Ireland, which doubled between 1792 and 1841, led to keen competition for land; the result was that agricultural holdings were sublet and subdivided to an ever greater degree. Leases were rare with the result that tenants became more and more subject to the whims and oppression of their landlords. Evictions, confiscation of improvements and excessive rents were more than ever features of the tenancy system. In response to the agitation for reform there was passed the Land Act of 1870, which granted Irish tenants the right to sell their interests in their leases, gave them compensation for disturbance and for improvements when evicted, abolished the ancient principle of the sacredness of free contract and liberalized state financial aid in the purchase of holdings. The inadequacy of the law, which left the Irish people still dependent on leased land for their living and failed to curb the rent raising proclivities of the landlords, led to turbulence during the greater part of the 1870's. The result was the passage of the Land Act of 1881, granting the "three F's"—fair rent, fixity of tenure and free sale. Other reforms followed, chief among which were the land purchase acts of the 1900's, whereby the state pledged its credit to enable tenants to purchase their holdings from the landlords, price being based on fair rents. By 1914 land to the value of over £120,000,000 had passed into the hands of occupying tillers, so that two thirds of all the small holdings of Ireland were possessed by former tenants.

In Scotland the effect achieved was much the same, although the form of tenure differed fundamentally. In 1886 because of the insecurity of the tenants, high rents and the difficulties encountered in the enlarging of holdings the Crofters' Holding Act was passed applying to the seven counties embracing the whole of the western and northern highlands. The principal provisions of this enactment were the following: a crofter or tenant could not be removed from his holding except for breach of certain statutory conditions; he was to be guaranteed a fair rent, which was to be fixed by public authority; on removal from his holding he was to be compensated for improvements for which he and his family had been responsible. In 1897 a board was set up to further the development of agriculture through land settlement schemes and in time its activities were extended to include all the crofting parishes. This board bought estates, divided them up, sold the holdings to settlers on the basis of purchase price annuities, made loans to encourage the erection of buildings and other improvements and cooperated with large landlords in carrying out land settlement projects. In 1911 the benefits of government aid were extended to small landholders throughout the country, so that fully two thirds of the farmers received either assurance of security of tenure or the offer of state financial assistance toward the purchase of holdings. It is important to note that in Scotland the chief settler remained the tenant; under the system built up by the various landholders' acts he was guaranteed right of occupation, his holding was protected against sale, mortgage or division and he was promised a judicial rent.

In England and Wales land settlement took still another form with the passage of the Small Holdings and Allotments Act of 1908. The Board of Agriculture and Fisheries was authorized to purchase and lease estates, to divide them into allotments (of an acre or less) and small holdings (over an acre) and for the most part to turn these over to agricultural laborers and small farmers on the basis of perpetual leaseholds. These small holdings, which were in effect nationalized, were to be administered by the county councils. How rapidly the small holdings movement advanced in England and Wales before the World War may be seen from the fact that, between 1908 and the end of 1914, 195,499 acres were acquired, of which 178,911 acres were let by the county councils to 12,584 occupiers. The average size of the small holding was 14 acres.

In the British dominions, particularly Australia, the desirability of converting what had once been pastoral lands into farming units led to the inauguration of a program of closer settlements on a grand scale. Before the close of the nineteenth century every effort of the Australian government to check the onward march of the pastoralists had been unavailing. Everywhere sheep herders were squatting on state lands, and their refusal to cooperate rendered quite futile the interesting plan for the settlement of the land by farmers, as set forth by E. G. Wakefield. Moreover their strength in legislative councils compelled the Australian states to recognize their possession of sheep runs by the passage of leasehold and free selection acts (beginning with the Robertson Act of 1861 in New South Wales). Yet in the long run Wakefield's ideas

were to triumph in a modified form, although at great expense to the states which were compelled to repurchase the government lands from the pastoralists, sometimes several times over, before closer settlement could be attained.

The heart of Wakefield's scheme, as explained to the House of Commons by his friend Charles Buller in 1843, was the establishment of colonization as "an extension of civilized society instead of that mere emigration which aimed at little more than shoveling out paupers to where they might die. . . ." To Wakefield land, labor and capital were the essential elements of any systematic program of colonization; and capital, to be obtained from the sale at comparatively high prices of the crownlands, was to act as the fusing force. Wakefield therefore suggested that the government first survey and then sell the public lands; the money thus received would pay for the assisted passage of agricultural laborers from England; these immigrants were to hire out among cultivators, meanwhile saving their earnings; they in turn would purchase land, thus providing the funds for other immigrants, who would be put to work on the farms already established. Thus an endless chain of land purchase, emigration from the home country, permanent labor supply and further land purchase would be maintained. A colonization society was established and during the 1830's and 1840's the plan was experimented with in South Australia, New South Wales and New Zealand. It ended in failure, for capitalists continued to pour their funds into sheep herding, while those laborers who were brought over either hired out as shepherds or chose to seek employment in the towns on the coast.

The free selection program, first inaugurated by New South Wales and then in Queensland and Victoria, resulted in further triumphs for the pastoralists. The original intention was to grant only a temporary recognition of the rights of the sheep herders; in New South Wales, for example, pastoral leases on the crownlands were to be renewable every five years and the right of preemption was severely curtailed; on the other hand, agriculturists might obtain homesteads from the public domain on the basis of free selection, the state compensating the squatters for such improvements as they had created. The result was that the sheep men were able to entrench themselves more deeply, for by exercising the right of free selection they found it possible to purchase the key sites of their runs. Leaseholds were thus converted into freeholds, so that during the twenty-three years that the Robertson Act was on the statute books of New South Wales the sheep raisers in the state came into possession of great landed properties. Agriculture was no farther advanced relatively than it had been at the beginning of the settlement of the country.

These successive failures compelled a radical change in Australia's land policy. To further closer settlement beginning with 1888 one state after another abandoned the freehold form of tenure and substituted the leasehold, permitting only a conditional right of purchase; Queensland went so far as to deny any right of alienation. Beginning with Queensland in 1894 the states then proceeded to pass repurchase acts in order to hasten the breaking up of the large estates; in 1904 New South Wales was given the statutory power of compulsory resumption, as were later all the states except South and Western Australia. The road was now open for the inauguration of a program of closer settlement.

Victoria showed the way with the passage of various land settlement acts between 1899 and 1914. To prevent aggregation and to insure the permanent possession of areas by their cultivators it was ordered that a settler's title to the land could not be secured until after twelve years of residence; after that time titles were to contain a clause requiring the settler or some member of his family to live on the land eight months of every year. The applicant was required to deposit 3 percent of the capital value of the land when the unit was entered. He then received a conditional purchase lease which was to extend over a period of thirty-one and a half years, the purchase price being repayable in sixty-three half yearly instalments consisting of $4\frac{1}{2}$ percent interest and $1\frac{1}{2}$ percent sinking fund per annum. During the first six years a settler could receive financial aid up to $2425, and after six years advances might be made up to $4850. State credits were provided for the erection of improvements and the purchase of stock and implements. The commission in charge of the enforcement of the act even went so far as to build ditches and laterals in irrigated areas, plow the land, grade it, plant alfalfa and construct houses. In many cases livestock was provided. This procedure saved time and money so effectively that in many instances settlers from Europe were living in their own houses and making good incomes from their own dairy herds thirty days after their arrival in Australia. Finally, the state found it necessary to organize

the settlers for cooperative buying and selling and to provide a competent superintendent for each district. This scheme has been conspicuously successful, as have similar ones modeled to a considerable extent after it, which have been adopted by other states of Australia and the Union of South Africa.

An unforeseen post-war development has been Jewish land settlement in Palestine. The English mandate over Palestine, together with the Balfour declaration recognizing the rights of the Jewish people to reestablish its homeland, gave an impetus to Zionist activities, in which agriculture has been considered the essential basis for sound economic development. It is true that during the previous fifty years Jewish immigrants, aided to the extent of $50,000,000 by Baron Edmond Rothschild, had established small agricultural settlements on the coastal plain, despite the prohibition by Turkish law of the acquisition of land by Jews.

At the present time about 280,000 acres (supporting a farm population of 40,000) are in Jewish hands. About 31 percent of this acreage is held by the Palestine Jewish Colonization Association, a foundation created by Baron Rothschild, and 25 percent by a Zionist organization, the Jewish National Fund; the balance is in private hands. The latter fund, supported by contributions of Jewry throughout the world, has purchased land which can be leased but not sold and is held as the inalienable property of the Jewish people. On this land it is the policy to accept settlers without capital; colonization is conducted by means of funds gathered in the same manner by the Jewish Foundation Fund, which furnishes money also for farm improvements and agricultural equipment. The most unique phase of this colonization is the fact that of the fifty-eight settlements with a total population of about 7200, the majority are in the form either of complete communes or of small holders' cooperative settlements based exclusively on self-labor, the settlers being members of the labor federation. The majority of these settlements are located in the valleys along the maritime plain, the valley of the Jordan and the valley of Jezreel. The latter has become once again, as in Biblical times, the granary of Palestine. The cost of this type of settlement has been high; it has, however, been reduced from about $5000 per farm unit (exclusive of land) to between $3000 and $3500. It is hoped that eventually part of the money will be returned for use in future development, and contracts guaranteeing such repayment have now been signed by about one half of the settlements. All new settlers under the Rothschild Foundation are required to sign contracts.

The purchase of land was attended by great difficulties: oriental land laws, ownership based on tradition, unrecorded titles. It has given rise to considerable discussion over the rights of Arab tenants and squatters and the Arab agricultural population, a discussion not free from the political implications arising from the conflicting interpretations of the mandate by the mandatory power, Zionists and Arab nationalist leaders.

Astounding progress has been made. Fertile lands which had been abandoned because of malaria or otherwise neglected have been converted into areas of modern scientific agriculture, despite the fact that the majority of the settlers were without previous agricultural experience. The scientific methods now established in orange and viticulture to supplant the primitive indigenous practises have been accepted by Arab growers as well. Swamps have been drained and irrigated, modern farms have been built, and an agriculture as primitive as that of Abraham's time has been supplanted by one of modern science and implements.

In recent years internal colonization has become an essential part of the agrarian programs of Latin American states. The general land law of Argentina calls for the founding of colonies and requires that land be surveyed, classified and planned. In Brazil colonies are established, settlers receiving for a time free food, medical care and seed. In Peru the government furnishes agricultural tools and seeds to colonists in the mountainous region and provides transportation for them from the seacoast to their destination. Mexico since the revolution has traveled farthest of all toward directed settlement of the land on the basis of small holdings. Deriving its authority from article 27 of the 1917 constitution the federal government has evolved a program in which the National Agricultural Credit Bank, the government and private land corporations, the latter threatened with expropriation of their holdings if they refuse to cooperate, all play parts. The plan calls for the establishment of colonies of small holders only after the land has been fully prepared and at least 50 percent of the prospective settlers have been secured. Colonists are entitled to 5 to 50 hectares of irrigated land, 15 to 250 hectares of good non-irrigated land and 50 to 5000 hectares of pasture land.

State credits are provided contingent upon the settler's ability to carry himself over the initial trial years. The final title to the holding is not vested in the occupier until the completion of his payments to the state; he has no rights of mortgage or alienation until that time. As additional aids to agriculture the government is committed to admit into the country duty free such special articles as may be useful in the furthering of the colonization projects and to meet part of the traveling expenses of settlers proceeding to their holdings.

That no quarter of the globe has been left untouched by the movement is demonstrated from the history of the Far East. In Japan, for example, special inducements have been offered settlers in an effort to colonize the northern island of Hokkaido. A tract of land of 12½ to 25 acres is placed at the disposal of the homesteader without charge; if he succeeds in cultivating at least 60 percent of his holding within five years he receives title to the land without any payment. Farm implements may be purchased at reduced rates through the government, while railroad fares for homesteaders are halved. During the 1910's and 1920's the central government of China, the provincial governments of the three eastern provinces and local officials in the latter made repeated efforts to encourage the colonization of Manchuria. As C. Walter Young points out (*Pioneer Settlement*, p. 340): "For twenty years proclamations of provincial and district authorities in Manchuria have been posted . . . purporting to announce lands available for the asking, together with offers of financial assistance, food and implements." While in many cases these generous offers, particularly on the part of colonization companies, have been merely traps to catch the unwary, it is undoubtedly true that Manchuria's colonization has been hastened by directed settlement projects.

In addition to enacting legislation designed to hold their own nationals on the land many governments have recently adopted legislation to attract settlers from other countries. Thus the government of Brazil has offered to the South American Development Company of Japan a tract of about 2,500,000 acres for colonization. The Japanese government in turn grants subsidies to finance emigrants to Brazil. In Peru a large concession of land has been granted by the government to a Polish delegation, which is obliged to bring settlers from Europe. The concessionaire pays all transportation charges and furnishes camps, tools, seeds and the like. The government gives each settler a freehold of 60 to 250 acres, the balance of the land going to the concessionaire to cover expenses of colonization.

Similarly the agreements entered into between the imperial government of Great Britain and the dominion governments of Canada and Australia provide for aid in placing English colonists on the land in the empire's oversea possessions. This scheme grew out of the Empire Settlement Act of 1922, under which the British government was authorized to join with the dominion governments in any plan of assisted migration, meeting half the cost of the enterprises. As a result Great Britain and Canada in one particular instance came to an understanding whereby three thousand British families were to be settled on the land in Canada. In order to defray their transportation costs, equip their farms and maintain them until they achieved results from farming operations the British government set aside $4,500,000. This sum was to be advanced as credit to the settlers, the individual loans varying in amount but averaging about $1500 per family; the loans were to be repayable over a period of twenty-five years with interest not in excess of 5 percent. On its part the Canadian government pledged itself to furnish the settlers farms in established districts, the holdings to be equipped with houses and farm buildings as well as with a sufficient amount of land for immediate cultivation. Between Australia and Great Britain an even more pretentious understanding was reached when in 1925 it was decided to settle 450,000 immigrants in the commonwealth within ten years. In speaking of the Canadian project the Oversea Settlement Committee declared in 1926 that "the scheme has thus far proved a conspicuous success and promises to become the most successful effort in colonization undertaken by any government in modern times." But Stephen Leacock (*Economic Prosperity in the British Empire*, p. 127), after a critical survey of all the settlement programs inaugurated throughout the empire, has come to a less sanguine conclusion, finding that "in spite of all the facilities afforded by the Act, the volume of [British] migration is less than it was before the War, without State subsidies. . . ."

Colonization plans throughout the world ceased for the most part during the World War, reappearing, however, at its conclusion. This revival was stimulated to a considerable extent by the desire to assist ex-service men to obtain farm homes. Many countries adopted laws ex-

tending the provisions of existing land laws to grant special privileges to former soldiers and sailors. All of the English speaking countries with the exception of the United States passed special soldier settlement legislation. This aid to the service men took a variety of forms. Reduced rates or free transportation and allowances were given to the soldier and his family during a probationary period. The soldier was given or sold land at the cost of purchase and subdivision. Advice, guidance and instruction in farm and marketing practises were provided. The land was graded, and farm tools and sometimes farm animals were supplied free or at cost. Credit was advanced for the taking up of mortgages and encumbrances; for clearing, leveling and ditching lands; for erecting fences, buildings, barns and houses; and for construction of homes. Assistance was afforded in the organization and maintenance of cooperative buying and selling associations. In every instance the payments for the purchase of the land or for the reimbursement to the state for advances made for improvements were stretched over a long period of time.

In the United States unusual efforts were made by the administration to obtain the adoption of legislation authorizing the placing on the land of all interested ex-service men irrespective of their qualifications for the work. Fortunately this proposed legislation was not adopted by Congress. Under the present laws ex-service men receive certain advantages in filing claims and occupying their homesteads. So far as the federal reclamation projects are concerned, an ex-service man must possess the same qualifications required of a civilian, that is to say, those of capital, experience, industry and character; but he is given a preferential right of entry of ninety days at the opening of any public land farm units.

A number of the states in the union did attempt, however, to launch land settlement experiments. During the war period and immediately thereafter California, Washington, Oregon, South Dakota, North Carolina, South Carolina and Colorado set up land settlement boards; in the first four states the boards were authorized to acquire land for subdivision or to subdivide state lands. Some of the statutes contained provisions for the improvement of the plots, sale to settlers on easy terms and advancement of credit for the purchase of livestock and equipment.

The California Land Settlement Act of 1917 more nearly approximated Australian examples than any other similar legislation in the United States. Here the statute created a Land Settlement Board and loaned it money at 4 percent interest, the whole to be repaid in fifty years. The board was to plan communities and furnish them with expert guidance, extend credits to and amortize the payments made by the colonists, help the settlers in the creation of cooperative agencies and by its assistance lessen the time in which each farm was to be improved. Two such projects were launched, the first at Durham and the second at Delhi. At Durham the board bought 6300 acres, of which 5000 acres were capable of irrigation. The board then proceeded to build irrigation works and divided the plot into farms varying from holdings of 9 to those of 300 acres. The land was leveled, crops were planted, settlers were helped in the planning and erection of their houses and farm buildings and were granted loans running as high as $3000. Following all European and Australian precedents prospective settlers were not encouraged unless they possessed a sizable capital of their own. In this case it was found that settlers would require $4500 of their own money.

Certain definite lessons have been learned from this beginning in California which must be intensively applied before the United States can hope to match the progress in directed land settlement already made in other quarters of the globe. All factors which control health and production must be studied before the land to be colonized is acquired. The price to be paid for land should be fixed on the basis of its earning capacity from cultivation. Only group or colony settlement should be attempted. Cooperative activity in buying and selling is an essential of rural progress. Every settler should have enough capital of his own to protect the state against the losses it might suffer because of the lack of thrift or experience of the settler. The minimum requirement should not be less than 10 percent of the cost of the improved farm. Title to the land should be retained by the state for at least ten years. While the form of tenure granted should be designed to prevent speculation it should at the same time safeguard ownership. A perpetual lease with the right of children to inherit gives as secure a tenure as a freehold title. The land should be prepared beforehand to enable the settler to derive an income from it as soon as possible. Arrangements for lending money and helping in the building of homes should always be features of any planned devel-

opment. The settler's source of credit in the United States is now limited to the local banks, which will lend only for short terms and at high interest rates. The Federal Land Banks cannot help him in these early years, as they will lend only on patented improved land. What is needed then is another source of credit on which the settler may draw to meet his immediate needs of development, repayments to be made over a long period of years at a low rate of interest. In this respect the United States has lagged a quarter of a century behind other nations. Settlers are to be aided with advice as well as credit. The number of settlers must be large enough to create a distinct community life, in order that they may be encouraged to adopt new and improved methods of farming, to raise pure bred stock and to buy and sell cooperatively.

ELWOOD MEAD

See: LAND GRANTS; HOMESTEAD; LAND UTILIZATION; LAND TENURE; SMALL HOLDINGS; IRRIGATION; RECLAMATION; BACK-TO-THE-LAND MOVEMENTS; FRONTIER; AGRARIAN MOVEMENTS; LAND MORTGAGE CREDIT; AGRICULTURE, GOVERNMENT SERVICES FOR; VETERANS.

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LAND SPECULATION is a type of speculation which deserves special consideration not only because of the economic peculiarities of the commodity that is the subject of speculative activity but also because of the extensive and special consequences of that activity. Speculation in land is distinguished from investment in land by a broad zone rather than a sharp line. The investor in land acquires it primarily with a view to employing it as a factor of production; the speculator primarily in the hope of profiting by an expected increment in value. The investor, however, may be compelled to assume risks of changes in value, while the speculator may find it necessary to engage in the developmental functions of a producer either as an incident of ownership or as a means of promoting the increment of value which he is seeking. Frequently the purchase is motivated by both objectives.

Land speculation is distinguished from other types of speculation largely by the special attributes of land regarded as a commodity. Speculation in land is materially affected by the lack of homogeneity of the units of sale. Occasionally, as in land booms and in mineral speculations, location is so paramount a consideration that trading may occur from plats and other descriptive material, but in most cases actual examination is requisite. Since land cannot be assembled at market centers for inspection there is lack of widespread familiarity throughout the market with the facts of supply and demand and with the movement of values. The fluidity of the land market is further limited by the complicated details necessary to effect a transaction. In many cases speculative acquisition involves the assumption of heavy obligations for fixed charges and burdensome managerial responsibilities. If the land is divided into numerous small holdings, a speculator is confronted with an excessive amount of costly negotiation. In the case of urban lots the appropriation of a potential increment in value is inhibited by the presence of buildings which would have to be removed to permit more intensive utilization. These various conditions prevent the land market from having the continuity and liquidity characteristic of the markets for wheat, cotton and standard securities. The lack of homogeneity has prevented the development of short selling and therefore of hedging. Recent attempts at the formation of real estate exchanges have not materially altered the situation. In turn the fact that land is not liquid, except in brief periods of boom activity, and the inability to hedge limit the readiness to buy and sell characteristic of certain other commodities. All land speculation is speculation for the rise, based on a feeling, if not a conviction, that the general trend of land values is continuously upward—except of course in the case of a genuine boom, where each individual expects to sell before the turning point is reached.

Land speculation takes many forms in accordance with the character of risk and the various arrangements for the making of transactions. In the case of good agricultural land recently opened for settlement the prospect for an increase in value may be fairly certain, depending mainly on increase of population and development of transport facilities, local markets and social utilities. In a developed agricultural area increase or decrease in value depends largely on the course of agricultural prices, their relation to the prices of other commodities, and tendencies in taxation. The movement of the general price level is also a major influence on prices of urban land and of forest and mineral lands. Land values are not, however, nearly so responsive to changes in the business cycle as are the prices of other commodities.

Land prices, particularly of mineral and urban lands, also fluctuate widely in response to merely local influences. A sudden discovery of oil may give rise to a brief period of frenzied speculation. The values of particular urban areas are responsive to innumerable influences, such as the development of public improvements, the shifting of fashion, the sudden development of local industries or the encroachment of an obnoxious industry. Ordinarily, however, where an increment can be reasonably anticipated it tends to be capitalized; this in turn restrains further speculative activity. Normal activity in the buying of land in the expectation of an increment in value may, however, suddenly develop into a land boom. In a boom values temporarily rise out of all normal relationship to actual or potential income. A boom is likely to be preceded by a considerable period of steadily rising prices, which attract widespread attention to the opportunities for a speculative profit. Once started, the increase in momentum, intensified by the ingenious activities of the professional land promoter, is cumulative. The financing of land speculation is carried on in large part by the same institutions which make possible investment in land. Mortgage credit institutions may stimulate ownership and small holdings, or they may become linked with large speculative schemes. Before the development of stock exchanges a method of speculation on margin existed in the widespread practise of buying land on deposit of a fourth or less of the full price with the hope of selling out at a profit before final payment was due. A land boom, especially an urban or mineral boom, may give rise to a rapid turnover of options and "binders," or contracts of sale secured by a small down payment. On the other hand, the great boom in agricultural land in the United States at the close of the World War was based mainly on conservative terms of sale.

Both the small speculator and the large land company appear in the history of land speculation. Both contribute to rising values; the latter involves also in its success or failure the numerous investors in its stocks and the credit institutions with which it is usually closely associated.

Land speculation has constituted in the main a comparatively recent phase of the development of capitalism. So long as property in land was tribal, corporate or public, there was lacking the freedom of transfer essential to speculative activity. Under the manorial system in Europe land tenure was rigidly governed by custom, and even after that system was replaced by more modern forms of tenure and long after the development of a money economy—a *sine qua non* of land speculation—property in agricultural land was subject to numerous customary or legal incidents that restrained the freedom of transfer essential to speculation. Traditional attachments of families, whether of peasants or of landlords, to particular holdings; long leases; the embryonic character of the land market and of facilities for mortgage credit; and the crude and costly methods of effecting transfer of land titles exerted a severely restraining influence on the sale of land, particularly of agricultural land.

Land speculation first acquired economic significance as a concomitant of urban development. The cities of Egypt, Babylonia and Greece and Rome under the republic appear to have developed under rather strict public control, which precluded speculation; but with the pressure of population and the increased development of a money economy in imperial Rome land speculation on an extensive scale made its appearance. Rising land values and tenement housing accompanied speculation in building sites. During the Middle Ages difficulties of land transfer made speculation impossible. The subdivision of holdings necessary to the rapid city building of the twelfth and thirteenth centuries was accomplished by means of land leases. Building sites were leased for a fixed sum, usually for an indefinite period; increasing rents therefore did not bring increasing returns to the landowner, and speculative activity was directed to house building and ownership, where it was carried on extensively. The seventeenth and eighteenth centuries marked the culmination of the building up of great landed estates. Fortunes were gained by enterprising individuals in the course of this evolution; in 1546 a certain citizen of Antwerp secured control of large tracts of land near the city, laid it out in lots and avenues and sold it to the rising city merchants for country houses. But in general the continuing difficulties of purchase and the mercantilistic policies of the period left little room for widespread speculation in land.

The nineteenth century saw the development of land speculation on a scale so extensive as to constitute a major social problem. Industrialization and the crowding into cities were the driving force behind urban land speculation; the removal of legal restrictions and a laissez faire policy were its opportunity. While rapid city building first occurred in England and was accompanied there by a certain amount of speculation in building sites, the type situation and the pattern of future development, for the continent at least, were set by the rebuilding of Paris by Napoleon III under Haussmann. With the publication of the decree laying plans for the cutting through of new streets widespread speculation set in. The remaking of the city meant an immense increase in values. Speculation was carried on by land companies as well as by individuals; it was facilitated by the development of mortgage banks and it drew upon the already established financial institutions for support. During the 1860's and 1870's many of the cities of northern Europe followed the example of Paris. Brussels was the first to adopt the widened streets and the replacement of single dwellings by tenement houses on the Parisian model. The change was accompanied by similar widespread speculation.

It was, however, in Germany that urban land speculation developed in its most acute form. It was most active in Berlin and Munich, especially the former, which was growing with unusual rapidity, but was present in all the larger cities. In Berlin a real speculative fever set in during the 1860's and reached its height in the 1870's. The total value of land in the city doubled between 1865 and 1880. The slight recession of activity after 1875 gave way to increased speculative activities in the 1880's and 1890's, which contributed largely to the crisis of 1900–02. A distinguishing feature of the situation in Germany was the predominance of large scale, organized speculation. While many individual owners took advantage of rising land values within and around the cities to sell at a profit and while much buying and holding of land was done on a small scale, the important speculators were the large land companies (*Terraingesellschaften*). While these land companies could afford to hold land out of use for long periods awaiting rises in values, their profits depended in the end upon its sale; and when no other purchasers appeared, they themselves often set up intermediate purchasers of building sites (*Baustellenhändler*), which immediately resold at a profit to building companies (*Bauunternehmer*). A similar pattern of relationships has

appeared in city development throughout the world during the nineteenth and twentieth centuries (*see* REAL ESTATE); but in Germany far more than elsewhere the active force in the development was the land speculator. It was usually the land company alone which had adequate capital; of all the land companies operating in Dresden in 1910 the smallest had a capital of 1,000,000 marks, the largest of 6,000,000 marks. The building companies, on the other hand, were generally small and lacking in adequate credit facilities; in many cases they were but straw men for the land companies; they were financed partly by the latter and partly by the large banks (*Grossbanken*), the mortgage banks (*Hypothekenbanken*) and the various insurance institutions. The large *Terraingesellschaften* were also closely related to the *Grossbanken*. Thus land speculation became doubly linked to the whole credit system of the country —through the widespread holding of the shares of the *Terraingesellschaften* and through the advances made for speculative purposes by credit institutions. In the crisis of 1900–02 and again in that of 1911 a serious difficulty was created by the immense losses sustained by these institutions as a result of the failures of such companies.

Since the World War land speculation has greatly decreased in Germany and the other European countries. The fall in prices and the lack of capital have wiped out most of the land companies, while the widespread development of communal and semicommunal landownership and of municipal and public housing programs has largely prevented the reappearance of land speculation.

In the United States rapid city growth was accompanied and in many cases hastened by extensive land speculation. The story of the Astor fortune has acquired almost a mythical currency. Astor began buying land in Manhattan as early as 1805; in 1847 his fortune was estimated at $20,000,000. Later parceling out of New York City land was accompanied by flagrant corruption, choice water front lots being sold for nominal prices to favored politicians, while fortunes were reaped by speculators with inside knowledge of the course of public improvements. Similar situations occurred in most cities, small and large, throughout the country. In New York City a further widespread real estate boom occurred between 1900 and 1910, resulting in a 116.3 percent increase in assessed value of land within the city. Higher assessment rates coupled with rising interest and tax rates temporarily checked speculative activity, but from 1922 to 1926 it reappeared. Suburban development gave opportunity for new forms of land speculation and promotion. Throughout the country hundreds of miles of paved streets, electric lights and sewage systems have replaced agricultural land only to remain unused and ghostly monuments of optimism.

Speculation in agricultural and mineral land has accompanied the opening to settlement of new areas in all parts of the world throughout the nineteenth and twentieth centuries. There have been cases of speculation in agricultural land in Europe, such as the widespread speculation in the confiscated lands of émigré nobles after the French Revolution; but such activity has been small in comparison with that in the newer countries. For the most part land speculation occurs where there is the prospect of a rapid shifting of land from one use to another, whether from forest to agricultural use, from agricultural to urban or from low value residential to high value commercial uses; and such opportunities have been most evident, apart from the cities, in the newly developed lands.

In the American colonies land speculation made its appearance early, not unaccompanied by fraud. Land companies as well as individuals obtained vast tracts of land west of the Alleghenies at negligible prices. Throughout the country speculation was one of the most important motivating forces in the advance of the frontier; after 1800 it was carried on to a greater extent than formerly by small purchasers and settlers, who bought far more land than they could hope to till, in the expectation of rising values. The first real craze of speculation occurred after the War of 1812 when the Treasury agreed to take the notes of western banks in payment for land in return for agreement by these banks to accept and reissue Treasury notes. Large speculators increased in number after 1820. There were many records of fraud; at auctions of township land groups of speculators often agreed not to bid above a minimum price and then resold at a high profit. There was a period of great speculative activity in the years after 1830. Land was bought only to be resold, with no intention of settlement. In many cases local banks were heavily involved in the financing of such sales. The panic of 1837 wiped out many speculators and caused a lull in their activity, but just before the crisis of 1857 there was another outbreak of speculative mania. All

along the frontier speculation ran ahead of settlement; in many cases it held land out of the market so long that settlement was forced to pass around or over it. With the adoption of preemption and homestead laws more land was acquired directly by farmers instead of passing through the hands of land jobbers, but there were always opportunities for evasion. The great grants of land to railroads and to educational institutions, the swamp land grants and the distribution of mineral lands opened vast new territories for land speculation. Even with the passing of the frontier about 1890 speculation attending the development of new areas continued. Railroads continued to be cut through new sections and land along the way sold at a profit by those who had had knowledge of the coming of the railroads. Speculation in mine and oil lands increased. In 1909 and 1910 the whole country was swept by a wave of speculation which involved most of the banks in extended loans. There was a great boom in agricultural land throughout the west and south at the close of the World War, the effects of which were intensified by the crisis of 1929.

In most of the British colonies the early period of settlement was accompanied by land speculation very similar to that in the United States. In Canada the basis for future speculation was laid in the colonial period in huge grants to large owners, to the clergy and even to land companies. At a later period railroad building was accompanied by land speculation schemes and forest and mineral lands were parceled out to favored politicians for speculative uses. Recurring attempts at reform and the setting up of land settlement schemes did little to check such abuses. Speculation marked the early stages of settlement in nearly every section of Australia. The introduction in 1831, under the influence of Wakefield, of the sale of public lands at auction at a minimum price, brought to an end the period of land grants which had already resulted in alienation of much of the best land, but it did not put an end to speculation. In most of Australia administrative inefficiency and the successive raising of the minimum price for lands gave the necessary opportunity. Even the successes of the scheme engendered a spirit of speculation. In south Australia, where the Wakefield scheme was to receive special application, the difficulties of securing settlers led the government to sell off portions of its land to a few capitalists at very low rates, with the expectation of increases for later purchasers. Administrative inefficiency in surveying new territory contributed also to speculation in town sites by the numerous immigrants. In the boom in Melbourne city lands which culminated in the crash of 1892, pastoral and mining lands were also drawn into the speculative vortex, with serious results to agriculture as well as to public finance. In New Zealand provincial control of land disposal frustrated the efforts of the central government to build up small settlements and resulted in a land boom which collapsed in 1873. It was not until the 1890's, however, that effective land reform measures were introduced. Speculation was, nevertheless, still extensive in New Zealand and land changed hands with great rapidity.

In South America settlement of new areas exhibited great variations in the different countries; in general it was complicated by the existence of native races with their own methods of land tenure and by the fact that immigrant settlers were in many cases unable to secure title to lands but were forced to become tenants of the descendants of original large holders. Nevertheless, wherever railroads were built there is evidence of speculation in land grants. The newest area of migration, Manchuria, is apparently experiencing a similar course of events. Public officials purchase land in districts in which they plan to build railroads; these are then actually built several miles to one side of towns along the right of way, thus assuring a market for the intervening land. The lucrative nature of the practise has led to railroad construction more rapid and extensive than is warranted by existing settlement.

The question of the social advantages and disadvantages of land speculation is in part a phase of the more general question of the advantages and disadvantages of private property in land and indeed of capitalism as a whole. Given private property in land, unrestricted markets, private initiative and an unstable price structure, fluctuations in land values and consequently speculation are inevitable. Assuming these basic conditions, a certain degree of social justification for speculation may be alleged even though its excessive manifestations may be deplored. Under a system of private property someone must own the land and take chances on fluctuations in values. Legitimate productive enterprises necessarily incur risks of changes in land prices unless these can be shifted to speculators. Prospects of a speculative profit stimulate economic enterprise, such as pioneer settlement, prospecting for minerals and planning and de-

veloping urban subdivisions. While economists do not agree as to whether high land values cause high rents or vice versa, there is little question as to the effect of speculative promotion activities in building organization and prices or as to the lack of adequate housing facilities for the vast majority of the population which results from speculatively controlled city growth. Overexpansion of the farm area is also stimulated at times by land speculation, particularly in the opening up of new areas for products enjoying a narrow market, such as truck crops and fruits. Ill advised reclamation is promoted in periods of rising prices for farm land, and submarginal lands are occupied which later must be abandoned. Land values out of all proportion to possible farm incomes and taxes based upon such values can only result in a depressed agriculture, in a mounting burden of mortgage indebtedness and an increase in farm tenancy. The chaotic and excessive development of mineral production is also attributable in large part to the speculation inevitable in so risky an industry.

When land speculation takes the form of a boom, the unfavorable consequences already mentioned are intensified and are accompanied by others. Small investors who can ill afford to assume financial risks are drawn into the vortex of speculation. Studies of the agricultural boom at the close of the World War indicate that urban speculators reaped most of the harvest of realized speculative profits, leaving farm buyers handicapped by abnormal capital investments. Municipalities as well as private businesses incur an abnormal indebtedness in expectation of a rapid development, which is suddenly terminated. Business may be long handicapped by the aftermath of heavy taxation, abnormal financial obligations, distrust by credit agencies and the large volume of distress liquidation.

Single taxers and others have laid much emphasis on the distributive injustice involved in appropriation of the unearned increment (*q.v.*). This question is related to the wider problem of the social evaluation of private property in land. There is no conclusive evidence to show that land speculation contributes materially to inequality of wealth distribution. The longer the period during which values increase and the more frequent the turnover, the more widely the increment is diffused. It is an open question whether losses of professional speculators may not in the long run exceed gains. It is widely believed that the aggregate expenditures of mineral prospectors exceed their profits; and studies of urban land values suggest that, taking into account carrying charges and costs of promotion, development and sale, the balance may be on the red side of the ledger. Individuals and concerns that have special advantages in obtaining information, ample credit and particularly political influence in the control of municipal improvements enjoy unusual advantages in land speculation. It is doubtful, however, whether their opportunity for making abnormal profits is as great as that enjoyed by those in a position to manipulate prices of securities.

Restriction of abnormal land speculation or alleviation of its worst abuses is worthy of serious consideration. The problem would be largely solved of course by the elimination of private property in land or by the single tax in its extreme form, whatever the other advantages and disadvantages of such measures. Various groups have suggested methods for minimizing the evil effects of land speculation. In the case of mineral and oil lands the formation of mineral pools and the "unitization" of oil well operation would go far toward eliminating speculative abuses. For both agricultural and urban land increment taxes have been proposed and experimented with, notably in England and Germany; taxes on resales within a limited period after purchase have also been suggested. Some of the abuses may be mitigated through pressure by credit agencies to restrain excessive speculation and through the efforts of the real estate profession to impose a higher ethical level of practise. Without abolishing private property governments are in a position to take most of the profit out of speculative activity by various measures: on the one hand, as has been done in a number of European cities since the World War, through the provision of adequate housing at a cost lower than that prevailing under a system of private speculation; on the other, in the case of agricultural land, through proper distribution and use of the public domain and through the establishment or encouragement of cooperative settlements and a system of small farming based on continuous income rather than on the hope of sudden gain.

LEWIS CECIL GRAY

See: SPECULATION; REAL ESTATE; BOOM; PROMOTION; PUBLIC DOMAIN; LAND GRANTS; LAND SETTLEMENT; URBANIZATION; HOUSING; LAND TAXATION; SINGLE TAX; UNEARNED INCREMENT; RENT.

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LAND TAXATION. The land tax is probably the oldest form of taxation. Essentially a tax on the yield of land, in its primitive form it was assessed on the basis of area. In its more developed form it is a tax on the annual revenue derived from land or on the capital value of land. Originally the land tax was strictly a tax in rem, levied according to purely objective characteristics of the tax base without regard to the personal characteristics of the taxpayer. In more recent years, however, the tax tends to assume the characteristics of a personal tax. Taxation of land is also accomplished by means of general tax measures, such as the general property tax, in which landed property is the foundation of the tax base, and the general income tax, which reaches the income derived from land. The advent of income taxation in modern times reduced the fiscal importance of land taxes. Where the land tax continues to exist alongside the general income tax it is generally used as a means of subjecting income derived from property to a heavier tax burden. In countries with a decentralized form of government land taxes are usually reserved for local taxation. Land taxes proper should be distinguished from the so-called increment taxes, such as the increment duty and reversion duty in England and the various increment taxes in Germany, which were adopted primarily for the purpose of appropriating the unearned increment in land value by the state as well as discouraging speculative land holdings and in which fiscal motives were of secondary consideration (*see* UNEARNED INCREMENT).

The origin of land taxes is lost in antiquity. The earliest land taxes were usually associated with the conquest of foreign territory and were in the form of tributes levied by the conqueror upon the subjugated people for the use of the conquered land. There were land taxes as early as 2000 B.C. in China and a tax cadaster based on a comprehensive survey of agricultural land is known to have existed in early Egypt. In part derived from the Roman land tax and in part an independent development, primitive forms of the land tax existed throughout the Middle Ages; they were, however, of slight importance and of transitional character. A tax on land was introduced in England in 1692 but was converted into a redeemable rent charge in 1798. The development of effective land taxes did not begin until the establishment of modern cadasters, for which the Austrian *Censimento milanese*, prepared in the years 1719 to 1760 and the first of its kind, served as a model. The land tax was the object of a lively discussion in the economic literature of the early modern period. For a time it was not only considered as the principal tax but was advocated as the sole form of taxation. This single tax doctrine (*see* SINGLE TAX) found in English economic literature of the period from the sixteenth to the eighteenth century attained special importance with the physiocrats. The physiocratic doctrine exerted perceptible influence upon the fiscal policy of the French Revolution, and the French land tax of 1790 served as a pattern for subsequent land tax legislation in other countries. The land tax spread to most of the countries of continental Europe, to some countries of the Far East, where it built upon the traditional ancient tax forms, and gained a strong foothold in Australia, where it was considerably modified in the light of the economic and fiscal needs of the country. In the United States the early adoption of the general property tax left no room for land taxes proper, but with the differentiation of property and the growing evasion of personal property under the general property tax the latter has become to a

large extent a special tax on land. The land tax experienced a considerable revival during the post-war period. It is prominent in the tax systems of the new states in central and eastern Europe and has been in a modified form incorporated into the fiscal structure of Soviet Russia.

The establishment of special tax rolls, the so-called cadasters, has been found indispensable to the effective administration of land taxes. The cadaster is a register kept up to date recording all the facts necessary for the assessment of taxes, such as area, type of soil, kind of crop and degree of fertility. The establishment of complete and reliable cadasters covering an entire country is therefore a task of many years, even decades, the expense of which is justified on the ground that such a survey serves other important ends, as, for example, national defense. During the nineteenth century many countries established cadasters.

Where the revenue is used as the basis of assessment the cadaster is designed to facilitate the estimate of the average yield of a plot of land. Such an estimate presupposes an accurate survey of all the land and its classification into groups according to type of crop, degree of productivity and other characteristics. While in one country the rough classification into arable land, pasturage and timberlands may suffice, in others a more refined method of differentiation according to the type of cultivation may be required. The country as a rule is divided into assessment districts. Within each district careful estimates are made of the productivity of typical plots of land, which are then used in estimating the probable yield of comparable plots. In Japan a single assessment district is chosen as a model, and the yield of plots in the other assessment districts is estimated by comparison with the plots in the model district. In order to ascertain the net yield it is often customary to deduct production costs from the gross yield. But since these are usually lump sum deductions of a somewhat arbitrary nature, the result is not the average net yield but at best lies somewhere between the gross and the net yield. In order to take into account the fluctuations of price, crop yields and marketing conditions for agricultural products the cadaster value is taken as the average yield of usually ten to fifteen years. Years of unusually large crops as well as those where exceptionally high prices prevail for agricultural products are usually omitted in this computation. A cadaster prepared in this manner thus indicates only the average yield to be expected under normal conditions of standard cultivation. In countries where tenant farming predominates the procedure of ascertaining the yield of land is simplified by the use of farm rentals as cadaster values. In this case a fictitious rental of the plots farmed by their owners must be determined. This, however, offers no difficulty because of the wealth of data available for comparison. As the tax on rentals reaches only a portion of the net yield, namely, the net rent accruing to the owner, it has become customary in such countries to levy a special tax upon tenant income and the income of farmers cultivating their own land in addition to the land tax covering rent income. The land tax in the form of a tax on the revenue derived from land possesses the disadvantage of leaving untaxed land which yields no current returns or taxing it incompletely in times of rapid appreciation of real estate when market prices of land increase at a faster rate than that warranted by the earning capacity of land. It was this circumstance among others which accelerated the adoption of the increment taxes in countries which assessed their land taxes on the basis of return.

Where the value of the land is the basis of assessment, the practise has been to use the capitalized value of the average annual yield or to assess the tax upon the so-called current or market value. In the long run the former is undoubtedly the more accurate index of taxable capacity. It suffers, however, from the difficulties inherent in ascertaining the net yield and is further complicated by the problems involved in the selection of the proper interest rate as the capitalization factor. Assessment according to the current or market value is preferably based as nearly as possible upon the sales price of plots of similar quality and in similar locations. This assumes of course that the turnover in the real estate market has been sufficient to furnish adequate comparative material. Since the purchaser in the sale of land used for agriculture usually bases his offer upon a profit calculation previously made, thus arriving at the value of the plot by way of its yield, the current value will at times approach the capitalized income value. But as a rule the differences between the two are rather considerable, particularly in countries where land hungry peasants may force the price of small holdings beyond the level justified by their earning capacity or where the amount of prestige attaching to ownership of landed estates may exercise a similar effect on the values of such estates. In general the use of real estate

values as the assessment basis is an unreliable guide for the just distribution of the tax burden.

The problem of rates offered no particular difficulties in the older land taxes; they were strictly proportional, applied to all real property and were levied without regard to the personal circumstances of the taxpayer. The more recent land taxes, however, have incorporated the principle of differentiation according to the type of crop, location, kind of farming or in the form of a progressively graduated tax. Japan is an example of the differentiation of tax rates according to type of crop. Rice fields and truck farms enjoy a lower tax rate than do lands devoted to other crops. The Polish land tax as applied to the area which was formerly a part of Russia groups the land into several classes, selects one class as the standard unit and calculates the rates for the other classes by multiplying the standard rate by various factors fixed by law. The principle of graduation was introduced into the Italian land tax of 1917 and into the new land tax legislation of the various German states after the World War. A most elaborate rate structure is found in the land taxes in Australia and New Zealand with differentiation according to size of estate, character of tenure and residence of the owner: absentee owners are taxed at a higher rate. Differentiation of the tax burden by means of graduated surtaxes in addition to a basic proportional tax is a feature of the Polish land tax as well as of the land tax legislation of the Austrian succession states. In Soviet Russia the so-called agricultural tax as modified in 1926 is a progressive tax levied on the earnings of the peasant household regardless of source and assessed at standard rates fixed in accordance with the economic conditions prevailing in the various parts of the country. The use of rate graduation and differentiation is frequently inspired by other than fiscal motives. In countries of extensive agriculture, such as Australia, differential rates have been resorted to in order to discourage the formation of large estates, tenant farming and absentee landlordism. In densely populated countries use is made of differential rates and exemptions to foster the development of certain types of cultivation and to promote land improvements, such as clearing of forests, reforestation of denuded areas and reclamation of land for agriculture.

Land taxation in any form raises the cost of production and lowers the net income yielded by land. The immediate burden of the tax rests on the producing farmer. The extent to which he is able to shift the tax charge to his consumers by raising the prices of his produce depends upon a number of circumstances. In a comparatively self-sufficient economic area protected by a tariff wall against the importation of agricultural products from abroad an increase in the land tax is easily shifted to the consumer in the form of higher prices for agricultural products. Where, however, the domestic producer is exposed to competition with the foreign producer either in the former's own country or in the world market and consequently sells his produce at world prices fixed by factors largely independent of cost conditions in any particular country, the burden imposed by an increase in land taxes rests on the farmer. The low cost producer who hitherto enjoyed a wide margin between cost and selling price finds his net return decreased by the amount of the tax increase. The marginal producer who barely covered his cost of production, including a minimum of profit, will have to produce at no profit or at a loss, change to other crops or withdraw from cultivation. In practise the decision to shift to other types of cultivation or to withdraw from cultivation altogether is accompanied by considerable difficulties and is usually made only after a protracted period of submarginal prices. In general it is fair to conclude that the land tax tends to place the burden upon the agrarian producer and that a shift of the burden to the consumer is the exception rather than the rule.

The land tax is a somewhat inelastic and rigid form of tax. In so far as it is based upon cadastral surveys and assessments a just distribution of the tax burden is impossible, if only because of the rapid rate of obsolescence of such registers and the consequent discrepancies between cadastral and actual values. It is therefore not advisable to institute sudden increases in the tax burden, which only multiply the injustice inherent in tax distribution according to cadaster valuation. Land taxes which have been levied upon plots of land at the same tax rates for long periods of time, as was the rule in former tax legislation, tend to take on the character of a fixed charge upon the land. The purchaser of a plot of land or of an estate usually deducts the capitalized amount of the land tax from the purchase price when determining the net yield value. Thus the new purchaser does not bear the burden of the tax; he has shifted it to the previous owner.

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See: PROPERTY TAXES; ASSESSMENT OF TAXES;

LAND VALUATION; CAPITALIZATION AND AMORTIZATION OF TAXES; GENERAL PROPERTY TAX; SINGLE TAX; UNEARNED INCREMENT; HOUSE AND BUILDING TAXES; TAXATION; LOCAL FINANCE; PUBLIC FINANCE.

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LAND TENURE

INTRODUCTION ..... CARL BRINKMANN
PRIMITIVE SOCIETIES ..... ROBERT H. LOWIE
ANCIENT WORLD ..... FRITZ HEICHELHEIM
WESTERN EUROPE, BRITISH EMPIRE AND UNITED STATES ... HEINRICH CUNOW
EASTERN EUROPE AND NEAR EAST ..... DAVID MITRANY
RUSSIA ..... PETER STRUVE
INDIA ..... RADHA KAMAL MUKERJEE
CHINA AND JAPAN ..... YOSABURO TAKEKOSHI
LATIN AMERICA ..... GEORGE MCCUTCHEN MCBRIDE

INTRODUCTION. The social significance of land tenure in any society depends upon the economic uses of land in that society and upon its legal and institutional structure. This complex variability precludes easy generalizations from preconceived "laws" of economic or social development. As an example of the danger of such generalization one may point out that the most intense, although passive, use of the soil as "standing room" by modern city agglomerations may be based on individual freehold and municipal ownership, while at the same time in the case of the English cities it is based largely on semifeudal leasehold.

In a rough way a certain parallelism of economic and legal development may be taken to lead from the more collective tenure and extensive cultivation of land to the more individualistic and intensive. In early cultures the radius of movement of the primitive *Wildbeuter*—hunters and nomads—is necessarily large relative to the size of their social units because of the small part played by labor in the exploitation of the flora and fauna; and the nomadic "carelessness as to land" finds expression in the astonishing range of transcontinental and transoceanic migrations which characterizes early history. But these conditions survive the nomadic and hunting period; and the introduction of the agricultural uses of land, whether in gardens or fields, alters them only slowly. Because of the exhaustion and depletion of the soil there is a tendency for plots and fields, excepting perhaps the great delta and irrigation cultivations, to shift about for a long time amidst an overwhelming area of wild woodland or grassland. It follows from such instability that in these islands of intensified tenure the evolution of the interest of smaller groups or even individuals is apt to be changing and conditional. In the Germanic and Slavic countries of mediaeval Europe rights of "common," not only in pasture but in all other exploitation of land and water, are predominant. But even in the countries in which this is not so marked collective tenure invariably furnishes the setting for more individual tenure, either when common uses of land supplement the individual uses or when collective administrative rights limit these individual uses or even create them by periodic reallotments. Some phase of tenure in commonalty is thus characteristic of most agricultural systems down to the rise of the peculiar individualist property concept connected with modern entrepreneurial capitalism. Increasing attention to this fact by economic and social historians, even where it is but dimly visible, as in Greek and Roman antiquity, would do much to clear up the continual shifting of the political and economic accent in agrarian history between landlordship and large estates

on the one hand and peasant proprietorship on the other.

The vesting of land tenure in an individual as distinct from a social group, whether of contemporaries or of successive generations, is thus a very modern concept incapable of complete fulfilment even in a capitalist economy. But so also is land tenure as an individual right exclusive of other concurrent rights. What must seem a contradiction in terms to the property notion of Roman or of modern civil law—namely, that there may be two or more property rights in the same thing—is evidently the most general rule in the institutions governing the tenure of land. The "monarchical" or "democratic" rights of overlordship and eminent domain in the soil of a tribe or territory express in various forms the fact that until the development of the capitalist concept of landed property immune, except under abnormal conditions, from the state itself society tends to regard all individual tenures of land as normally dependent upon and limited by its own collective tenure. The actual institutions which embody this "superior tenure" are of course manifold. There may perhaps be an all powerful instrument of kingship, as in Africa, India or the Germanic kingdoms. A compromise may be reached with the ruling classes regarding their family property, as in the different systems of mediaeval feudalism. Or the collective interest may apply in different ways and degrees according to whether the land is in individual or collective use and to the extent to which it is settled or in use. Of special interest are the cases where modern civilization reaches into either a real desert or a region of earlier civilization. Whether the newcomers bring their own more or less developed settlement laws or whether a fringe of "no man's land" is created, there is a clash and possibly a compromise between two systems of land laws, as in the American Indian reservations or the French and Italian penetration of northern Africa.

Second in importance only to the subjection of land tenure to collective or "public" control is the superposition or splitting up of interests in land through "private" transactions. It should not be overlooked in this connection, however, that quite generally the boundary lines between public and private law are fleeting and delusive, above all with respect to land, which has hardly ever or anywhere ceased to invest even its most private uses with at least a touch of public character.

The multiplication of private interests in land may take two forms. First, there is the vertical division of property or possessory rights leading either to something like the feudal distinction between "direct" and "indirect" dominion or to the more commercial relationship between landlord and tenant farmer. Second but closely connected with the first, the laws of debt and credit have in addition to their organizing function done much to shift and disturb land tenure. Ever since the dissolution of the most primitive collectivism the way has been open for more individualistic debtor-creditor relations between those who have land, which is regarded as the best security, and the lenders in kind or money, who have often been not only economically but mentally superior to the agriculturists. Among the many causes making for this twofold multiplication of interests in land the foremost is the division of social functions on the basis, on the one hand, of a system of upper, or "ruling," classes which assume the more complicated tasks of the military and administrative protection of society, and, on the other, of a system of urban centers which develop, more or less in contact with these ruling classes, higher economic and intellectual levels of social organization.

The rise of feudalism and rural indebtedness out of the specialization of warlike services which crushed the small and elevated the large landholders is easily overstated and oversimplified. It is true that the great advances in costly armaments, such as the adoption of more elaborate metallic defensive or offensive weapons, have been frequently connected with the ascent to power of warrior-landlord classes—the Homeric charioteers and the Greek, Roman, mediaeval and far eastern knights. But as soon as these technical advances can be financed through taxation by the central government, landlordism ceases to follow them as an inevitable result. Nor is military organization the only or even the most important form of that division of social functions which breeds and is bred by inequalities and dependencies in the tenure of land. From even the more "democratic" primitive society, where the great patriarchal or noble landholders are sought as arbitrators by their common tribesmen, down to the feudal and postfeudal dualism between the jurisdictional rights and duties of the lord and those of the various courts of his men, "class rule" is never to be understood exclusively as the assumption of social privilege through economic and intellectual superiority but also as the devotion of this superiority to a number of social services.

The connection of agricultural land tenures with public functions is characteristic of the prevalence of "natural economy." On the other hand, urbanization and the more commercial and entrepreneurial forms of leasehold and tenant farming mark the transition to a money economy. Freehold and leasehold of houses in the mediaeval town have played a leading part in the expansion of capital, mainly through the institution of the various forms of the rent contract, especially the perpetual contract. Although land tenure in ancient and oriental towns is as yet less explored, it seems significant that one of the chief origins of the hypothec of Roman law should have been the liability of the farmer's chattels for the landlord's rent claims. No doubt the evolution of economic conditions and of legal forms toward money rested largely on an interaction of rural and urban forces, the more substantial cultivators contributing about as much to the growth of urban life as the urban entrepreneurs and money lenders to the dissolution of collective and seigniorial land tenures.

The resulting changes and transitions are infinite in variety. In the areas of early entrepreneurial development there is a rapid mobility of land tenures on the large estates, where the world wide money economy of the Roman church appears to have shown the way toward short leases and commutation of rents in kind into money rents. But there is also a rapid mobility among peasant and burgher tenures, where the absence or early extinction of the collective family tenures prevalent on the large estates facilitated the rise of a farmer class which was able to reorganize both its own lands and those of the great landholders or of the government (as in the continental "domains") on a new capitalistic model. In regions economically more conservative or stagnant, however, such as Latin America and most of southern and eastern Europe, feudal principles of land tenure have resisted the dissolving tendencies of the money economy and have limited its force to the building up of complicated systems of exploitation by middlemen and of equally complicated credit relations; here even urban capitalists instead of assuming the task of intensifying and mobilizing agriculture rest content with drawing rents and interest from the land in much the same way as the older type of seigniorial landlords. On the whole, from antiquity onward there is discernible a rhythm in the comparative scarcity of both entrepreneurial and executive labor. Next to geographical conditions this seems to have brought to the fore in the development of land tenures alternately the influence of political control and large estates and that of small units and more self-dependent cultivators. The last named, whether they are emphyteutic and military settlers or métayers combining natural economy with money economy and tenancy with wage labor, display the initiative of the small cultivator. Even the most consistently developed large scale farming of the present time, while premising to some extent the labor supply of a landless proletariat, tends nevertheless to replace former limitations on the personal freedom of the cultivators by giving them some hold on the land, even if it be only a plot, a cottage or a share in the raw produce.

Historically land tenures have been bound up with the lowest personal status of human freedom and with the highest of man's social hopes and utopias. In every case the tying of the tenant to the soil by custom or law has resulted either from the placing of slaves on the land or from the limitation of the migration of free tenants by a wide variety of devices at public or private (e.g. credit) law. The less rigorous of these devices must frequently have been acceptable to the landless, because they assured them long term or even inheritable tenures. As a rule they were only the expression of that totality of mutual rights and obligations obtaining between the landlords and tenants of most older agricultural systems. Similarly, land tenure ever since primitive society has been connected with military and political conquest. The superposition of nomadic rulers over conquered agricultural tribes and the slow blending of their racial stocks and their culture have been one of the most general and powerful factors in history. Although the first resulting stratification usually shows the tillers of the soil in various relations of public and private subjection to the conquering herders or hunters, there is reason to believe that the intellectually superior culture of the agriculturists finally prevailed by a process similar to the later supremacy of urban culture, despite its inferior legal and social status, over feudal society.

It is no longer possible for features of primitive collectivism, especially in land tenure, to be interpreted as proofs of that "primitive communism" which appeared as a sort of innate pattern of society to be regained definitely in some future commonwealth. But mistaken as is any such parallelism between primitive arrangements before and modern experiments after the

rise of private property, the preceding discussion of the long continuing "public" elements in all systems of land tenure points to the lack of reality in theories of unlimited property rights in land. The expectation, expressed for the first time by the Russian *narodniki* of the nineteenth century, that there was a possibility of overleaping capitalistic individualism and preserving a continuous development of the more fundamental institutions of a collective economy, especially on the land, has since found expression wherever, as in Asia and Latin America, precapitalistic societies have been confronted by capitalism. And the agrarian reforms of Europe, from Gladstone's reform of the Irish land law to the German "internal colonization" before and after the World War, have had in common a recognition that it is impossible, where land is the basic element of production and the foundation of national existence, to accommodate the rigorous lines of individualistic property and contract institutions to the alienation, leasing and inheritance of land. The two principal social instruments to prevent land from becoming a thoroughly individualized means of production have been large scale cultivation under more or less public operation and cooperation between small cultivators under community supervision. The conditions of production and marketing will probably continue to dictate a varying emphasis on this twofold program.

CARL BRINKMANN

PRIMITIVE SOCIETIES. Property rights are correlated with other social phenomena, so that a complete functional study of land tenure among primitive peoples requires a consideration of their government, clan and family organization, economic activity, technology and religion. For purposes of orientation the economic categories have proved most serviceable in grouping the facts, and they will therefore be followed in this article.

Among the hunters of Australia, as has been shown by Radcliffe-Brown, an autonomous localized lineage owns a definitely circumscribed tract, usually exceeding one hundred square miles, which all members exploit on equal terms. The sentimental bond uniting each of these "hordes" with its hereditary territory assumes religious significance. In other parts of the world, for example among the Plains Indians of North America, this religious attachment is lacking and the group is not limited to kindred. Such departures from the Australian norm do not alter the character of the communal pattern which involves equality of opportunity within the political unit; abstract communism, however, is not present. The territory is not an "every man's land" except for the members of the unit; aliens are rigidly excluded—the Californian Maidu go so far as to forestall trespass by a system of sentry posts.

All hunting tribes were formerly believed to conform with minor variations to this characteristic pattern, but recent evidence necessitates the rejection of this judgment. The Algonquins of eastern Canada and the adjoining territory in the United States, as Speck's studies have shown, stressed meticulously the private ownership of hunting territories; transgressors were liable to physical violence or evil magic. The Tolowa in California, according to Du Bois, shared the beach without special interests, but fishing grounds on a river bank were owned by individuals, as were the tracts for hunting deer. The Washo of Nevada owned individually clumps of pine nut trees and bequeathed them to their children. Isolated instances of this type of tenure are reported from Queensland, and in Ceylon, as revealed by Seligmann's studies, the individual Vedda not only owned land but were able to transfer tenure. Absolute individualism, however, does not prevail in these instances. The immediate members of the family are usually joint owners in contrast to the whole of the political group. This type of tenure may accordingly be designated as the family pattern.

Technological facts explain the frequent impermanence of land tenure among early agriculturists, where a preemptive possessory right took the place of ownership as defined by jurisprudence. For primitive farming with hoe and dibble involved at best inadequate compensation, so that the soil was soon exhausted and a new clearing became imperative. When a Choctaw erected a house and had planted a plot with maize and beans, his exclusive rights to the land were strictly respected, but if he moved elsewhere he forfeited his claim to his forsaken home; whoever wished could take possession without remunerating him for his labor. Such conditions account for the rarity among primitive agriculturists of the notion that land is conveyable.

Availability of fertile soil may be a significant factor in determining tenure. The Kiwai of New Guinea have an unlimited amount of rich land; every man owns more than he can use, and

economic independence goes hand in hand with social egalitarianism. Sons receive their allotments as they grow up, and during their father's senility they take over the estate with the obligation of supporting him. This joint interest is coupled with the notion of collective ownership by a paternal line of males. As in Melanesia, however, greater freedom of disposal obtains with reference to recently acquired plots. The Kiwai sharply distinguish between ownership and mere usufruct, which may be granted for a limited period. Since ownership is vested in the males of the paternal lineage, a piece of ground may be held collectively by a group of brothers or divided up among them according to agreement, the shares being normally equal. Landtman has shown that in contrast to the definite recognition of property rights as to cultivable land every one is at liberty to fish wherever he pleases.

Matrilineal rules of descent affect profoundly notions of land tenure and inheritance. In Dobu, New Guinea, a man's plots and palms are inherited by his sister's son. The linkage with the hereditary soil is so strong that after the mourning ritual a widower is not permitted to reenter his deceased wife's, i.e. his own children's, village; and although he may give some land to his son, no child may eat of any fruit or crop grown on the paternal tract. Irrespective of conjugal collaboration husband and wife each not only have separate gardens but each must use his own seed "saved yearly from a line of seed handed down . . . by inheritance" within the maternal lineage.

Choctaw, Kiwai and Dobuan society is democratic. Tribes organized on monarchical and aristocratic lines exhibit distinctive conceptions as to land, even where the ruling power is limited. Among the Mashona of Rhodesia the chief, as the vicegerent of supernatural beings, owns the land; hence each household, deriving from him the right to till a plot, may be dispossessed at his will and is precluded from selling the fields. In such autocracies as the Dahomi the king is absolute landlord throughout his realm and merely concedes possessory and usufructuary rights to the tillers. This does not of course mean that such assertions of the royal prerogative are regularly exercised. In parts of Polynesia and Micronesia also serfs or feudal vassals were found cultivating the soil without more than possessory privileges, and the god descended chiefs could tabu to their own use whatever territory they wished to exploit.

For the herder the value of land is derivative and intrinsically negligible. In general there is among pastoral nomads a glaring contrast between their meticulous assertion of property rights in herds and their carelessness as to land. For example, a monarch of the Ruanda in the Belgian Congo was in theory owner of all the livestock in the kingdom and conferred cattle, not territories, as fiefs. In Arabia the Rwala have fixed rules of inheritance as to camels but none as to territory. In southern India the Toda clansmen use the available pasturage collectively, and the same holds for the members of a Hottentot tribe and the Masai coresidents of a district. Different Hottentot tribes, however, formerly waged war for the ownership of grazing land. The same formerly held true of Kirghiz bands in Asiatic Russia who were communists in the summer when land was abundant but individualists in the winter, when a dearth of sheltered quarters was coupled with private ownership of winter territories, which were marked off by natural or artificial boundaries and guarded against trespassers.

ROBERT H. LOWIE

ANCIENT WORLD. Man's transition in the Old World from a hunting and plant collecting economy to one of plant cultivation and livestock breeding led to relatively stabilized communities. In cattle raising civilizations the clans owned their pastures; in hoe or gardening civilizations land tenure by families, joint ownership and in isolated cases private ownership of the land prevailed. Out of the merging of the two primeval types in the neolithic and the early bronze ages there arose agricultural or plow culture, which made use of plowed land, truck gardens, pasturage, forests, water and mineral resources. At this time the foundations of the economic and social order of the world's agricultural civilizations were established among the early Hellenes, the ancient inhabitants of Italy, the early Germans and the ancient Israelites. Except for the development of urban civilization the later bronze and iron ages introduced only technical changes. Pasturage and forest (such as the *ager publicus* in Rome) and water and mineral resources remained the tribal property of all freemen or of privileged upper classes; in an analogous manner gardens, houses and, in the Mediterranean area and the Near East, plantations for producing wine, oil and dates became private property. Tilled land together with the adjacent pasture lands or forests long remained

collective property to be redistributed annually according to a conventional scheme—a result largely of the prevailing system of bare fallow cultivation. Personal achievement and the positions of chief and divine king were rewarded by extra shares; thus upper class families and in the case of conquests tribes acquired special property rights (for example, the *kleroi* of all freemen in Greece, the *ager privatus* in Rome). Wherever private property was too extensive for individual cultivation, the land was tilled by serfs or by free tenants whose civil status tended to approach serfdom.

Between about 4000 and 1000 B.C. urban civilizations of kindred economic and social structure extended from eastern Turkestan and northwest India to the Aegean. Economic innovations consisted of the intensive use of interest bearing loan capital, in the forms of weighed out metal money and allotted foodstuff money, and craft production for the market. A charismatic monarchy regulated the economic life of society through state organization, loan capital and forced labor and, it is estimated, distributed 90 percent of all goods produced. The most important centers were Mesopotamia, where loan capital played an important role, and Egypt, where forced labor was emphasized. From the annual redistribution characteristic of bare fallow cultivation there evolved a centralized annual reallocation of the fertile alluvial land which never lay fallow. A centralized system of irrigation canals maintained by means of forced labor and loan capital made possible an extraordinary increase in the amount of agricultural land. Religious charismata, the rights of conquest and especially the dependence of land rent upon a centralized organization of land tenure soon made the chief of the state the supreme landowner. From geographically limited principalities under the authority of district rulers in Egypt and city kings in Babylonia there arose through a process of warlike accumulation the empires of Egypt and Mesopotamia, both of which served as the pattern for the economic and social organization of the other eastern urban civilizations down to about 1000 B.C.

Peasants, shepherds, hunters and fishermen were required to contribute to the royal treasury varying amounts of produce as well as labor; but they rarely became coloni confined to the land, as in lower Egypt. Out of fiefs, benefices and bequests to landowners and temples as well as through land colonization by entrepreneurs there evolved precarious private domains, as in the case of the predominantly secular tenure in the Old and Middle kingdoms of Egypt and the extensive temple property in the New Kingdom and in Mesopotamia. The farmers usually remained royal peasants under the direct protection of the state. Military colonists were settled upon inalienable and hereditary royal fiefs in Babylonia, Assyria and Egypt. In neo-Babylonia the obligation of providing recruits became fixed, attached to the plot of land and redeemable in money. The special tenure of the crown property continued to predominate. Except where royal peasants farmed them the domains were run either in the form of allotments to peasants, shepherds and fishermen, who were taxable as tenants, or as large estates operated centrally by means of free wage laborers and slaves. In Mesopotamia seed loans often brought the free farmer into permanent economic dependence upon money lending capitalists. Compared with the large landowner he was always at a disadvantage in the marketing of his products, for the money system of the period made possible only wholesale trade based upon currency. Market trade in small and cheap lots of goods remained on the clumsy and risky basis of barter; the dealers therefore went chiefly to the large agrarian producers.

Toward the end of the second millennium B.C. the Mediterranean basin and the Near East as far as the Indian frontier were settled by peoples whose social and economic organization was that of the agricultural civilization of the iron age. They replaced the overthrown empires by military communities of free farmer tribes with private family tenure of land and without a developed market and interest earning money economy. Only Egypt and Mesopotamia and the lower stratum of the conquered areas, chiefly peasant in character, which were subjugated by the invaders, were able to conserve their structure. Violent internal struggle accompanied the development of cities, of a market economy, of smaller royal domains with serf land tenure and of temple and noble domains in Asia Minor, among the Hebrews, Phoenicians, Aramaeans, Lydians, Medes and Persians; all of these were partly absorbed in the Assyrian Empire organized on the ancient oriental pattern. But this empire was unable completely to extirpate free agricultural land in the Near East; in Judaea, for example, it persisted under religious protection.

Little remained of urban economic influences in Hellas and Italy. The Homeric age represented almost entirely the aristocratic farmer

stage of a conquering people. The leveling process which was typical of early Hellenic development began at that time; it was stronger in the eastern section of Greece and in the oversea colonial areas than in the west of Greece, where the tribal community disappeared more slowly. Royalty and the priesthood were organized socially and economically within the noble class, the members of which settled together in isolated cities, while a part of the free peasantry sank into the subjugated class of bondsmen either because of debts incurred through the continuous state of war and the beginnings of money and market economy or as a result of military conquest. Aside from residual vestiges —such as the kings of Sparta, Cyrene and Macedonia and the temple at Delphi—noble, plutocratic landowning cliques finally attained political hegemony and there developed the distinction between the *hippeis* and *hectemorioi* in Athens, the *hippeis* and *penestae* in Thessaly, the *gamoroi* and *kyllyrioi* in Syracuse, the patricians and clients in Rome and the *oppidani* and *pagani* in Italy. Toward the end of this early period the hoplite phalanx, which was superior to the noble cavalry, came to the fore in the most highly developed Hellenic districts, particularly in the isthmus area. By the introduction of small minted coins, which made it possible for trade in small quantities to be organized upon a money basis, the small peasant's production for the market was given a chance with that of the large landowner. These factors, strengthened and regulated by lawgivers, tyrants and revolutionary movements, tended toward the leveling of the nobility and its land tenure by farmer hoplites, who rose to be the ruling class of the state and who as the demos often included landless freemen. During this period the Spartans thus became a socially leveled and stationary ruling class with estates farmed by enslaved Helots and with agrarian cities of the Perioeci subject to considerable taxation. The legislation of Solon—particularly the abolition of landed debt and the setting of maximum limits in purchase of land and possibly the creation of a land register—initiated the abolition of serfdom and the transition to an independent farmer class in Attica.

The age of Pisistratus, Croesus, Amasis and Cyrus (sixth century B.C.) was a turning point in the economic life of the world west of India. The Hellenic world came to be completely dominated by a money economy, which with varying intensity spread from Spain to the Indus. The Persian Empire took over an area with a predominantly ancient oriental social and economic structure, great state and private domains with many dependent peasants, but it allowed its provinces to follow their own line of development. Even before Alexander there began a cultural, social and economic Hellenization of Persia's Mediterranean provinces as well as of southern Russia, which had remained independent. Among the Greeks the farmer hoplites advanced in status during the fifth century as the result of an intensive money and market economy. With the exception of Sparta, where new large estates arose through inheritance and indebtedness within the stationary and diminishing caste of Spartans, and of a few residual remains, as in Thessaly and Macedonia, the farming class absorbed the large estates of the nobility and seized power in the form of oligarchic or democratic *poleis*, usually after driving out the tyrants, such as the Pisistratidae, who had paved the way for this development. Some of the landless freemen, frequently settled as cleruchs in subordinate agricultural areas, were also admitted to participation in state power, while the metics, who constituted a large group among the dealers and artisans, and the slaves remained without political rights.

In the fourth century B.C. the intensive development of money economy in certain regions, such as Attica, led to a new form of large estates farmed by slaves under strictly capitalistic principles of profit and to the decline of the peasantry, who further suffered from the competition of foreign trade. Because of the market opportunities of the time the status of the tenant farmers, who were far from unimportant in Attica and in the temple domains of Delos and Delphi, was much better than in the ancient Orient. The investment of capital in land by purchase or productive loans was not considered speculation, as in the Orient, but was regarded as a safe although relatively low income bearing investment. Rome, which during this period may be taken as typical of the more highly developed areas of non-Hellenic Italy, underwent a transformation of land tenure which slowly followed developments in Greece. The plebeians able to bear arms and the small free peasants fought for and achieved political equality with the gentes of patricians, who up to that time had ruled the city alone, had dominated together with their clients a large part of the *ager privatus* and had occupied a considerable percentage of the *ager publicus*. An economic equalization was achieved by agrarian laws, most of

which aimed at the founding of colonies with small allotments of land on conquered territory. The *leges Liciniae Sextiae* of 367 B.C., which may be regarded as authentic, provided that no private person might occupy more than five hundred jugera (about three hundred acres) of the *ager publicus* nor have more than one hundred head of cattle and five hundred head of small livestock grazing upon it. In 342 B.C. the *lex genucia* reduced the interest rate on existing loans 50 percent and in order to aid the small farmers completely prohibited the future taking of interest. This meant a reduction of landed indebtedness and further made it impossible for the rich upper class henceforth legally to reduce the free peasantry to dependence by means of loan capital.

The advance of ancient civilization as far as northern India and the Atlantic Ocean after the conquest of Alexander was accompanied by an economic assimilation of vast areas tending toward capitalistic accumulation of land. In the Greek world, especially in the Aegean regions, because of predatory wars, emigration, the decline of the birth rate and the linking of money economy and world trade large slave estates and leaseholds accumulated in the hands of urban investors in spite of agrarian revolutions, such as those in Sparta. In Macedonia free agricultural land, which had originally existed side by side with royal land, private land held under the sovereign domain of the king and land owned by the nobility, disappeared except in the mountain districts. State lands, noble estates, leased land belonging to Greek cities and waste land, a result of the wars with Rome, predominated. The Seleucid kingdom in the Near East overthrew the form of land tenure of the ancient Orient. It allocated among the autonomous Greek agrarian cities many royal, private and temple domains with their enslaved peasants; it improved the legal status of the royal peasants on lands under its direct control by giving them village organizations, so that numerous serfs became tenant farmers; and it settled military colonists everywhere.

The dissolution of the Seleucid kingdom resulted in a return to the rule of large landowners and the formation of great private estates. In Judaea, Mesopotamia, Iran and Armenia, formerly parts of the empire, oriental ruling classes rose to power. The sovereign tenure of the king, now employed capitalistically, had never been destroyed in Hellenistic India with its peasant caste bound to the soil or in Nubia. Pergamum in Asia Minor did not continue to reallocate the state domains taken over from the Seleucids except for a few military colonies but added to their number and extended serfdom. The same course was followed by the Roman provincial administration of Asia Minor, which during the first century B.C. aided colonization and the formation of large private estates with dependent peasants upon government land. During the second and first centuries B.C. the preference in the leased lands of the free cities and temples for hereditary leaseholds over leases for a term of years resulted in a stronger binding of the tenant farmer to the soil. Land tenure conditions in southern Russia and Cyrenaica resembled those in Asia Minor. In Egypt, on the other hand, the pharaoh's sovereign tenure of tilled land and pasturage was never relinquished except in a few cities; only royal land and granted land existed, the latter coming under the heads of temple land, soldiers' farms and land grants. Only house, palm and garden land, olive plantations and vineyards were privately owned. After about 280 B.C. the tilled land was farmed according to a uniform plan under the control of the Hellenized government administration, which employed native peasants with protected and bound legal status. The temples and some of the soldiers received nothing but an income from their land. The land of the rest of the soldiers and the land grants, in most cases previously waste land, as well as privately owned land were exempt from the provisions of the plan; these lands had to be cultivated. Private operation of large estates was possible on land grants if the government did not intervene. The decline of the kingdom of the Ptolemies during the second and first centuries B.C. undermined this system, as complete cultivation according to plan was no longer possible. Seed land often had to be converted into privately owned land in order to keep it under cultivation. Land tenure in Egypt then approximated that of the Hellenistic Near East with its mixture of domains and peasant land.

Sicily both as a kingdom and as a Roman province was more radical than Egypt in that it recognized only the state's tenure of land after the passage of the *lex hieronica*, so that hereditary leaseholders and original owners were on the same legal footing. In addition to taxable peasant land there were state domains, which were readily leased to big entrepreneurs operating capitalistic slave farms. The Carthaginian Empire and Numidia apparently also estab-

lished the state's sovereign tenure of land. As in the East there were urban areas with leasehold land and free peasants as well as villages of indigenous serfs, from which evolved large capitalistic estates with slaves and tenant farmers. After frightful devastation Rome allotted the land of provincial Africa under precarious tenure to friendly princely families, interest paying natives (*stipendiarii*), allied cities, native allies in war and large Roman entrepreneurs, exempting autonomous urban areas as *ager publicus*. Later the Gracchi, Marius and Caesar settled Roman colonists upon alienable land, among slave estates, leased and tributary land. In Gaul the estates of nobles began to displace the free peasantry before the time of Caesar, while in Provence Roman agricultural colonization commenced with the Gracchi.

Following the Punic wars Roman land tenure also began to approximate that of the rest of the world, whose center Rome had become. The old laws protecting the peasantry became obsolete. The Roman nobility, excluded from trade and commerce, began to build up latifundia in suitable regions—on the *ager publicus* and on cheap private land, which often had been devastated by war. These they ran for profit on capitalistic lines and were thus able to make use of their booty money and of the cheap slaves captured in Roman campaigns; they pillaged the entire Mediterranean basin. Despite the continued settlement of war veterans upon the land the number of small farmers in Italy decreased. Even the settlement and agricultural reform policies of the Gracchi retarded this trend for only a short time. The inalienability of the new peasant land, which they enacted into law, and their renewal of the limitation on individual occupancies of the *ager publicus* were soon nullified. The *lex thoria* of 118 B.C. and the *lex julia campana* of 59 B.C. again made the *ager publicus* private property with but a few exceptions.

Whereas Iran and Armenia evolved a feudal land tenure as the Greek cities declined, in the first and second centuries A.D. the Roman Empire began to be filled with Romanized and Hellenized agrarian cities as a result of colonization and constitutional changes. The citizens of these cities were primarily not small farmers but owners of latifundia and of tenant land. In addition there were enormous state domains, such as the *ousiai* in Egypt and the *saltus* in north Africa, which gradually absorbed a large percentage of the private and temple estates through inheritance and confiscation. As slaves became more expensive and the flourishing provinces scarcely required agricultural imports, the capitalistic slave operated latifundia were transformed into leasehold estates. In the East the vestiges of former village serfdom began to revive; dependent slaves were placed in hereditary settlements, especially upon waste land, as was the case with prisoners of war, the *laeti* and the *inquilini*, who could be sold with the estate. In Egypt and in north Africa the free temporary leasehold of the coloni, which originally predominated, suffered the forcible imposition of an increasing number of burdensome compulsory services despite imperial regulations for their protection. Hereditary leaseholds, such as emphyteusis, and similar legal forms grew more common because of the increased shortage of tenant farmers. Under these arrangements the free tenant families usually farmed urban areas, temple estates and then state and private domains. State domains and private estates exercised their own jurisdiction.

During the crisis of the third century A.D. large private estates of a feudal type arose. Waste state land was sold under compulsion to private landowners in return for the payment of taxes. Free peasants giving up their independence fled from the burden of state taxation to the shelter and protection of a baronial *patrocinium*. Veterans forcibly seized state land and urban leased land together with their hereditary tenants. The frontier troops and entire tribes entering the empire were settled as small peasants with the hereditary obligation of rendering military service. Thus there arose a new form of serfdom (the so-called colonate) and a new feudalism; ancient agrarian production based upon a money economy was almost completely destroyed.

During the fourth and fifth centuries institutions which had long been fully developed became standardized and there now began a new economic epoch with features of the Middle Ages. The coloni of the state and later those belonging to private individuals were bound to the soil in the several provinces in order not to reduce the principal tax of the empire, which was levied upon the unit of land. The *patrocinium* movement, which had long been vigorously combated through legislation, was legalized and stabilized about 415. By this time the feudal lords together with their coloni paid their taxes without the intervention of the provincial tax collecting agencies (*autopragia*); they dominated the cities and finally even took over the collection of taxes

from the remaining free peasants. As a result except in isolated independent villages these peasants also fell under the dominion of the landowners. In addition there were soldiers' estates (of the *stratiotai*), church estates and state domains differing in administrative structure and in purpose. These also were usually exterritorial in law and farmed by coloni, except when they furnished provisions for the court or contained factories or breeding farms.

The states which arose in the period of migrations as well as the empire of the caliphs based their land tenure systems upon this form of late antiquity. As a result of Heraclius' theme organization in the early seventh century the remnants of the empire which persisted in Asia Minor and in the south of the Balkan region down to 1453 again began to comprise a large percentage of free military farmers. Numerous other communities of free peasants also existed in the eighth century, and even the tenant farmers of the large estates (the *mortiti*) possessed the right of freedom of movement. During the ninth century, however, tenure by the nobility as well as the church again came to the fore. Laws of Romanus Lecapenus and Nicephorus Phocas for the protection of peasants and the confiscations of the tenth century had no effect. In the eleventh century there began the attacks of the Turkish tribes, who established a new military and civil peasantry in place of the late Byzantine feudal system.

FRITZ HEICHELHEIM

WESTERN EUROPE, BRITISH EMPIRE AND UNITED STATES. Economic and cultural historians long believed that the primitive form of agriculture characteristic of the early Teutons was the prevailing primeval form of land cultivation. From it the newer types of agriculture were supposed to have evolved everywhere at a definite stage in economic development. But new and thorough investigations of the economic life of the American Indians, of the civilized peoples of Central and South America and of the races of the South Sea have shown this point of view to be erroneous. They have proved that among these races agriculture took place as an outgrowth of hunting and of the collection of edible wild fruits, while in the case of the Teutons and the Celts it was preceded by a migratory pastoral life, out of which land cultivation gradually developed as meat, milk and collected plants no longer sufficed for sustenance.

The earliest form of Teutonic agricultural settlement in Germany was still dependent largely upon the raising of livestock, and the primary concern of the German settler was to obtain good pasturage for his cattle. Accordingly the early German farmers did not settle permanently in the newly conquered areas but changed their habitation after the meadows had been thoroughly grazed over and when the small plots of land sown with grain no longer yielded an adequate crop. These migratory clans did not, however, remove to outside settlements and pastures but remained within the confines of the area claimed by their tribes after the conquest. This is the kind of migration reported by Caesar in his description of the Suevi in his *De bello gallico* (IV: 1, 3; VI: 22) and by Strabo of Amasia (Asia Minor) in his *Geographica* (VII: 1, 3).

In the earliest period the gens rarely remained more than one or two years in its new habitation. As cultivation became more extended, annual migration ceased. The clans remained in their settlements and sought to increase their cultivable areas by clearing the common forest and pasture lands. The new land was divided into farming plots and either assigned to the free peasants or distributed among them by lot. The areas considered most suitable for cultivation were chosen for clearing and then divided into plots of about the same size. It was of no concern whether a participant in the distribution received more or less farming land, for there was more than enough available. Moreover the Germans did not understand accurate measurement but simply walked along the sides of their plots of land, estimating the area by the number of steps.

Gradually a certain standard, the *Lagemorgen*, was introduced as the basis of measuring off and distributing farm plots; it represented as much land as a peasant with his team was ordinarily able to plow in one morning, taking into consideration the quality of the soil and its distance from the settlement. In the third and fourth centuries the Germans along the Rhine began to uniformize the plots of plowed land, called *Kampe*, *Gewanne*, *Esche* or *Zelge*, and to divide them into long strips of land lying side by side. There were two reasons for this procedure: the quality of the soil could be better allowed for in the allocation of the strips to the peasant families; and in a plot of this shape the heavy plowshare did not have to be turned about so often. It involved one disadvantage, however, in that the peasant no longer got his share of the joint farming land in one continuous plot but received

several separated strips which often lay in four, five or six clearings (*Gewanne*). It is uncertain whether or not all the peasants who shared a cleared area (*Kamp*) did their plowing together. This was probably the case at first but, as far as is known, by the end of the fifth or sixth century each peasant plowed his own allotment of land. The various individual plots were in a *Gemenge* (mixture), interspersed among the other strips of the same cleared area. Frequently the peasant had no direct access to his plots and had to pass over adjacent ones to reach them; thus it was necessary, if the peasants were not to hamper one another in their work, that there be rigid land regulation providing that all sow the same kinds of grain and sow and harvest at exactly the same time.

Only those free peasants who belonged to the family or village community and who owned homesteads had a right to shares of land. In the earliest times the homestead usually consisted of a fenced in farmyard with a hut, barn and stable and a vegetable or truck garden. Such a peasant farm, called a hide (that which is lifted out of the common property), soon came to include not merely the farmyard proper but the right associated with it to the farm land, forests and pastures of the village community. Within a single family district, if not throughout all the regions of the Rhine, these hides were at first of approximately the same size. Later they often varied, largely as a result of division through inheritance, the increase or reduction in the amount of livestock and the purchase or sale of land. The owners of hides were differentiated into double hide, large hide, full hide, small hide and half hide owners. The theory that the ancient Germans did not recognize private property in land and that all land was jointly owned is incorrect. Even among the German tribes migrating from their northern homes the farmyards were private property, although their owners could not dispose of their farms freely and their interest in the land was a sort of vested possession rather than ownership. The arable, pastures and woodland were the common possession of the village community.

Among the Germans the political kinship organization determined the manner of settlement and land distribution. After a German tribe had conquered a region and taken possession of it, each clan, the members of which often comprised a unit of a thousand families, occupied an area in proportion to its size, and each unit of one hundred families in turn took over a smaller district within this area. Likewise the members of a gens or of a family usually settled together in one village. Now and then several related gentes settled together in the same village, but in such a case each gens demanded a section for itself. Thus there arose large and small group villages. Separated peasant farms were very rare in ancient Germany and existed primarily in the mountainous regions, which were practically non-agricultural and in which cattle raising was the chief means of subsistence.

The area which was occupied by a family clan was called a mark. Mark is an ancient word which in the form *margo* was commonly found among the early Aryans who penetrated into the Indian Punjab. At first the term was limited to *Geschlechtsmarken* (clan districts) or *Hundertschaftsmarken* (districts of a hundred families). Later, when several marks were often joined together or newly won territory was added to them, these enlarged areas were also called marks, including even *Tausendschaftsmarken* (districts of a thousand families) and tribal territories. The German gau (canton) was also originally a hundred unit district. The etymological meaning of the term gau is not, however, the same as that of the word mark. The word *gava*, derived from *go* (cow, cattle), is found in the hymns of the Aryans in India, where it means a cattle district; and among the Goths the *gavi* was but a small district. This was also true among the ancient Frisians and Saxons, and the gaus in the districts of the Asterga, Wanga and Nordwidu, mentioned by Ansgar in his *Life of St. Willehad*, were areas comprising only a few German square miles (1 German square mile was equal to about 19 square statute miles). Soon, however, large districts arose in the Rhine country alongside the small gaus. When the Alemanni reached the upper Rhine, they made a distinction between large districts (*pagi majores*) and small districts (*pagi minores*); the latter were also called *huntari* (districts of a hundred families) and *centenae*.

During the first few centuries of the Christian era the Germans concentrated primarily upon increasing their herds of cattle, and agriculture made slow progress. In Caesar's time the tilled fields, deserted when the tribes migrated, returned to a condition of wildness. But after the Germans gave up annual migration they endeavored to cultivate the same field over and over again; since there was no knowledge of systematic fertilization, after bearing grain for two or three years in succession the field was left fallow

for several years. Gradually the fallow fields were used for pasture and in time were plowed again and sown to grain. The peasants changed, in some places as early as the third and fourth centuries A.D., from this so-called savage plow and pasture agriculture to a regulated plow and pasture cultivation in which the changes were made at definite intervals. Subsequently crops were rotated and there gradually evolved the three-field system of farming, which spread over almost all of western Germany in the course of the eighth and ninth centuries.

As long as the number of hide owners was limited, the annual survey and reallocation of land involved little trouble. As the fields increased, reallotment became burdensome; furthermore intensive cultivation was hindered because the peasant had no incentive to plow and fertilize his plots thoroughly, for they might be allocated to another the following year. Accordingly the next step in land tenure consisted in the discontinuance of the annual redistribution, especially since with improved irrigation this became less imperative. Hence there grew up in various regions the custom of making a reallocation only when the number of those entitled to share had changed. The strip system, however, was retained.

The changing economic conditions involved in the course of this development are shown in the law of the Salian Franks, who conquered northern Gaul and then penetrated to the middle Rhineland and beyond, going as far as Thuringia. According to the Salic law, the oldest portions of which were probably compiled between 490 and 496 under the reign of Clovis, the Franks at that time still had their fields divided into tilled plots (*Eschen*), parallel strips of plowed land; but no mention is made of common fields, pasturage or periodic reallotments. The law does contain a number of provisions regulating the behavior of the hide owner in crossing the land of others on the way to his own, and fixing the damages to be paid for injury to crops resulting from such transit.

With further conquests an ever increasing proportion of the land was owned by the kings and tribal chieftains, and large estates spread all over Gaul and throughout the country east of the Rhine. In order to obtain faithful vassals and to win the favor of the Catholic clergy the kings granted a large part of the land conquered by them, the crownlands, as fiefs to their followers and to the church. The Merovingian kings were particularly lavish with land grants. The increase in the amount of land under the control of the clergy in France may be visualized from the computation made by Paul von Roth in *Geschichte des Beneficialwesens* (Erlangen 1850, p. 253), according to which at the beginning of the eighth century "one third of all landed property in Gaul was owned by the church."

In order to utilize the land the clergy and nobles followed the example of the Roman landowners: dividing their property into small plots, they turned it over to landless young peasants, to freedmen and to the poor, for exploitation and settlement under fixed conditions which varied according to the size of the plots, their location and the nature of the soil. Often the peasants had first to clear the land and build themselves houses; in such cases they usually paid rent only in money and produce. Where the land had already been cleared and perhaps even cultivated or where the landlord aided the tenant in the implementing of his farm, the peasant had to assume in addition to the leasehold rent all sorts of tasks, such as providing corvée teams and messenger service, working on the domanial lands at certain times, cutting wood in the forests and watching and feeding the cattle. Thus there arose in the countries of western Europe a manorial type of economy and a new system of landholding; the theory of feudal tenures was that the ownership of all land rested in the king while all the other holders in the feudal hierarchy were either tenants or subtenants. The fief holders held their lands upon special conditions, frequently involving military service.

The land tenure system of the northern Teutons, who remained in their old habitat at the time of the great migrations, developed somewhat differently from that of the Germanic tribes who settled in the former Roman countries. The northern Teutonic tribes, like the West Germans of the region between the Rhine and the Elbe, were organized into clans, thousands and hundreds. The hundreds' areas of the southern regions, as in Jutland, were usually smaller than the *harden* and *härads* of Norway and northern Sweden, since the Danish areas did much more farming than the northern regions of the Scandinavian peninsula. The type of settlement also varied. In Denmark and southern Sweden the hundreds sometimes settled in large villages, but usually each large family unit settled in its own little village, separated from the other settlements. This type of settlement is also closely connected with soil conditions and stock raising; each large family endeavored to secure

an adequate amount of pasturage as close to its farm as possible. Hence it was customary, when the herds grew very large and the pasture land was no longer sufficient, for a part of the younger generation to move, finding another place of settlement within the hundred's district. As a result in the twelfth century many tribes possessed from twenty to forty small settlements.

The conditions of tenure likewise resembled those of the West Germans. When a family group settled in an unoccupied portion of a district, it withdrew the land surrounding its settlement from the common mark land and cleared a few plots, which were then distributed or allotted among those entitled to shares. As is shown by the ancient laws, especially the West Göta law, each family group which could not make a living in its old dwelling place was free to seek a new place of settlement in another section of its district, to take possession of the surrounding land and to clear it. The unoccupied land of the mark was thus considered common property. Later of course, as the unoccupied areas continued to diminish, it was necessary for the migrants to come to an understanding with the other inhabitants of the mark before occupying new land. The farmyards, together with their truck farming land and cattle enclosures—the latter being included even when they lay outside the farmyard fence—were the private property of the individual families who resided upon them. In Norway and the northern regions of Sweden, since very little grain was planted, the tilled fields were very much smaller than in western Germany.

These tenures, however, applied only in ancient times. The Norwegian *fylke* kings began to crowd one another out of their districts in the eighth century, and finally from 865 to 875 Harald Haarfager subdued all of Norway's petty kings. He followed the custom of conquerors and seized not only the lands which the kings had held as their own property but many *allmends* as well, and from this confiscated domain made grants of land to his followers. Such land was given in *veitsle*, which meant that the grantee received not absolute ownership but the right to the income of the property in return for collecting revenue, furnishing armed forces and performing other services. Most of the land in Norway, however, continued to be held on *odel* tenure; that is, family ownership. Harald levied a tax upon such holdings, but they remained otherwise independent and a real feudal system did not develop.

Joint ownership of tilled land, the so-called common field system, had died out at an early date among the Salian Franks and among other Germanic tribes along the Rhine. Contact with the Romans, or rather with the Romanized Gauls, resulted in the decay of the ancient Germanic system of agricultural organization throughout practically the entire west and south German border regions. The old Teutonic agrarian institutions declined even more rapidly in the kingdoms founded by the Germanic tribes in Italy, southern France and Spain, the states of the Lombards, Burgundians, Ostrogoths and Visigoths. These tribes endeavored at first, but in vain, to conserve the old economic habits and legal customs, which had remained unchanged throughout their long wanderings. Roman estate administration and the colonate had permeated the native population of the countries subjugated by the Romans, and the difference between the Roman forms of tenure and economy and those of the conquering Teutons was too great to enable the latter to be grafted upon the former.

The changes in land distribution and cultivation in the new kingdoms founded by the Teutons in the Roman cultural world are best shown by the evolution of the agrarian systems of Italy and Spain during the early Middle Ages. When in 568 the Lombards after protracted wanderings invaded northern Italy, later called Lombardy, most of their old economic institutions and their common law had already given way to foreign customs as a result of contacts with Romanized tribes. They lacked their former inner unity; the army disintegrated and the leaders of the several detachments established small independent duchies, whose sovereignty was continually threatened by outside tribes. Like the other Teutonic tribes the Lombards had migrated because of a lack of land, and the dukes had accordingly to assign most of the conquered lands to their followers as fiefs. The former state lands they usually took for themselves and their associates, while the property of those Roman landowners who had fled or been slain was distributed among the Lombard nobles and freemen. Moreover, since these estates proved insufficient for this distribution, the Lombards were given tenure rights in the lands of those Roman proprietors who had remained in the country. The land of the latter was divided into three parts, of which two were returned to their owners while the third was assigned to the Lombards. The change in ownership did not re-

sult in any improvement in cultivation. The Lombard owners, taking the place of the Romans or of the Ostrogoths, continued the colonate system—the subdivision of the arable land into leasehold plots rented to half free tenants, the coloni. Nor did the tripartition of the land aid agriculture. For lack of implements, buildings, livestock and money the Lombard was often unable to farm his third of the land and accordingly turned over his allotment to the former owner for farming, contenting himself with a share of the crop. There was also little change in land cultivation in Italy during the period of Frankish domination, which followed the Lombard regime (568–774), and during the subsequent struggles between the papacy and the German emperors. Agriculture grew in extent and, as the kings and dukes granted considerable portions of the conquered estates to the nobility and the church, a new class of large landowners arose. The landlords farmed only a relatively small proportion of the newly acquired land. Most of it was subdivided into small plots, as in the Roman colonate, and was alloted to tenant farmers—sometimes to *libellarii*, who were free tenants holding land on hereditary leases in return for fixed rents, but usually to small tenants who farmed the land on shares, frequently half of the produce.

The Visigoths underwent the same experiences in Aquitania. In their newly conquered kingdom, which included most of Gaul between the seacoast, the Rhone and the Loire as well as the greater part of Spain, the arable land was divided into three parts, of which the Visigoths took two thirds, while the forest, pasture and waste land were shared. At the time of the conquest of Spain the Visigoths retained many of their old Teutonic laws; the farmyards as well as the tilled and truck farming land had already become private property, but forest and pasture land continued in many places to be considered the common property of the villages.

As the Visigoths were converted to Roman Catholicism the influence of the clergy increased and large estates and special privileges were granted to abbeys, monasteries and churches in order to insure their support. The dignitaries of the Visigoth kingdom followed the example of their kings, and the Catholic church became the largest landowner in Spain. The clerical and secular landowners generally did not farm their estates; the land was divided into small plots and leased to tenant farmers. For a time the Arabs put an end to the secular power of the clergy. They introduced new crops, such as rice, fruit trees and sugar, which needed intensive cultivation and which accordingly resulted in the division of land into relatively small holdings.

At the time of the invasion of England by the Germanic tribes the clan institutions and the land system of the British Celts were similar to those of the Irish, although most of the former had already gone over to permanent settlements and to a rather extensive plow culture. More detailed information is available concerning the Irish than the British Celts. During the first two centuries of the Anglo-Saxon invasions the Celts in Ireland were a stock raising people. Like the West German tribes at the time of Caesar they moved about with their herds within the districts belonging to their clan. Only during the sixth century did the Irish begin to settle in fixed villages and turn to agriculture. As a rule, three or four *trebs*—family groups containing from twenty to thirty persons—settled in a village (*baile*). They did not, however, intermingle; each family group resided in a separate section of the village.

In addition to livestock enclosures and some plots of land near the village planted with grain a *baile* included a few plots of garden land (usually called in old Gaelic *subgorts*, or cabbage garden), the amount of which depended upon the number of *trebs*. Such a village settlement together with the truck and grain plots and cattle enclosures belonging to it was called a *faitche*. Every *treb* in the village had a certain share, which was its family property and the crops of which it could use for its own needs. The plowed, meadow and forest land lying at a greater distance was called *sechter-faitche*. This, especially the forests and meadows, was common property; every *treb* could pasture its cattle upon the latter irrespective of the size of its herds and could cut wood in the forest for its needs according to fixed rules. When parts of the previously untilled common outer land were to be prepared for grain cultivation, the work was done in common, and the new cleared areas were often plowed in common before distribution.

In Ireland the clan chieftain possessed considerable power as early as the seventh century. He controlled extensive clan domains whose administration had been turned over to him, and which he often considered his own property. The clan chieftains attained even greater power after the development of a pronounced differentiation between rich and poor within the clans. Even in the fifth century the clan was no longer

merely a kinship group but included slaves, freemen adopted from other family groups and members of outside clans who were allowed to settle in the clan district as tenant farmers upon the payment of certain levies to the chieftain of the clan. Not all the tenants, however, came from other clans. They were often the younger sons of poor families of the same clan, who rented a few plots of land together with some cattle and the implements necessary for farming in return for rents to be paid in cattle and produce. The leasehold terms were always very stringent. This class stratification laid the basis for further social differentiation. The rich clan and village chieftains became ever more powerful and arrogant, while the dependence of the small tenant farmers increased, so that during the fifth century the relationship between the two classes resembled that of the landowner and serf on the continent.

In England the economic organization of the Celts had not been modified to any extent by the four centuries of Roman rule which had preceded the Anglo-Saxon incursions; and the Anglo-Saxons did not come into contact, as had the Teutonic tribes on the continent, with a culturally superior population. Thus the history of land tenure in England differs from that of the kingdoms founded by the Teutons on Roman territory. The Celts, who fought against the invaders and were unwilling to surrender peacefully, were made prisoners and treated as slaves (theows). Where the natives submitted to Anglo-Saxon rule they were usually allowed to remain on their farmsteads, but they were forced to pay taxes and tribute and often to render services to the Anglo-Saxon chieftains as well.

A true peasant people, the Anglo-Saxons did not settle in urban localities nor did they occupy the Celtic villages. Wherever possible they located their hams and tuns at some distance from the Celtic settlements for the purpose of supervising the latter. As in Germany each clan and gens occupied a separate district. The groups of a thousand families occupied districts called *scīrs*, later shires, while the groups of one hundred settled in smaller districts, called hundreds. Their method of settlement and their system of tenure corresponded entirely with those of the Teutons in western Germany. The term mark (Anglo-Saxon *mearc*) was used for the hundreds' districts. Although this has been disputed by several English historians, who claim that the *mearc* was only a frontier district, not a delimited settlement area, the Anglo-Saxon laws prove the contrary: in the laws of Hlothere and Eadric as well as in those of Withraed, Athelstane and Edgar the *mearc* is taken to mean an inhabited district. Each hundred was divided into several smaller groups, in which the relationship was closer: *maegths* (kindred), also called *maegsibb* (blood relations). A hundred, presided over by an *aeldor* (elder), usually consisted of from eight to ten *maegths*. The farm together with its garden land in the inner village area, the hide, was the private property of the free Anglo-Saxon residing thereon, called the *ceorl*, *freoman* or *friman*. The *utland*, outer land lying outside the inner village, was held to be the common property of all hide owners in the village, although this joint ownership did not always entail joint cultivation and use. The plots in this outer land set aside for cultivation were plowed and sown in common only during the earliest period of Anglo-Saxon rule. Later the cultivated land was divided into plots and long strips of plowed land and allotted to the hide owners. The forests and meadowland in the outer areas, however, were used in common. Each hide owner could cut a certain amount of wood for his own use from the village forests and could pasture his cattle on the grassland. Throughout most of England common village ownership of the plowed fields lasted only until the ninth and tenth centuries; after that time the shares of plowed land gradually became the private possession of the hide owners.

Pronounced differentiation in property holdings developed especially through the grants of the crownlands given from the eighth century on as fiefs by the Anglo-Saxon kings to the church, army commanders, knights, administrative officials and favorites. The new proprietors divided their lands into small plots, upon which they settled landless young peasants and freedmen, who had to make payments in money and produce and often had to perform services as well. The unsettled conditions of the country as well as the Danegeld and other taxes tended to depress the free peasantry and thus also to influence the growth of manors. After the Norman Conquest huge tracts of land were granted to William's retinue and to the leaders of the troops, so that by the twelfth century most of Britain's soil had been divided into estates, upon which a large part of the total population were dependents. The theory of feudal tenure in England as well as on the continent was that ownership was vested in the king.

The usual manor consisted of a peasant vil-

lage; at times two or three villages were included, while occasionally a single village was divided between two manors. The peasants, usually called villeins, or *villani*, were in bondage to the manorial lord. Their holdings, the virgates, usually comprised only one half to three quarters of the arable land of the manor. The remainder was known as the lord's demesne and was farmed directly for him. The extent of the plot of land allotted to the peasant and the imposts and services required of him in return varied widely throughout England. The average holding of the villeins was 30 acres. Whereas many peasants were taxed only in money and produce, others had to labor for a certain number of days upon the manorial fields or in the barns and stables and had to pay various forms of tribute (*gafol*). In return the lord had to furnish his villeins with plots of land and dwellings, cattle and a certain quantity of fodder as well as farming implements. These regulations applied only to the farms of the villeins. The cotters and the bordars, or bordarii, so-called because they dwelt at the boundaries of the lord's estate, had much smaller plots, usually 5 acres of arable, and as a rule received fewer cattle from the lord of the manor. Since they often had scarcely enough for their own sustenance, they were usually taxed only a slight amount of produce with a relatively greater amount of labor. Tenure in villenage was essentially unfree: the villein was legally only a tenant at will. As a result of custom and because of the lord's need of cultivators, however, dispossession was rare. In addition to these holdings there were free tenures, the holders of which usually paid a money rent and sometimes a small amount of labor. Their rights were protected by the royal courts.

With the increase in money economy the more prosperous villeins frequently had their services commuted in return for a suitable annual or lump money payment. The villein's tenures were converted into copyholds under which the tenants retained their occupational rights as long as they conformed with the conditions of their tenure. There were other copyhold leases in which the tenant had fewer privileges. There were also tenancies at will and the freehold tenures. The trend toward commutation of service tenures into money tenures was accentuated by the famine which England suffered in 1315–16 and by the Black Death of 1348–49, which claimed a toll of from one third to one half the total population of the country. Peasant farms were deserted. Although the lords tried to repopulate them, the surviving peasants were unwilling to return to serfdom, and their lands had to be disposed of either for a money or produce rental. The rises in the cost of agricultural labor and the growth of a money economy led the manorial lords to rent out the demesne lands also. The immediate result of the leasehold system was the growth of a prosperous class of tenant farmers. Holdings became more differentiated in size than they had been on the manor.

In the course of the fifteenth century many tenants were forced from their farms by the sheep enclosures. The development of the English wool export trade and of the textile industry made sheep raising a profitable business; many large landowners turned their cultivated land into pastures, while wealthy urban merchants bought up large tracts of farm land for this purpose. They dispossessed their tenant farmers; and although freeholders and some of the copyholders were protected by law, many were evicted by all sorts of chicanery. According to reports about 50,000 peasant farms were abandoned under the reign of Henry VIII (1509–47). The government intervened to put an end to the depopulation of the rural districts: in 1489 an act prohibited the destruction of peasant farms containing 20 or more acres of land, and Henry VIII decreed that a landowner might not keep more than 2000 sheep. These decrees were, however, ineffectual; the number of peasant evictions continued uninterruptedly and vagrancy became a serious social problem. It declined toward the end of the sixteenth century because the rapid growth of urban industry offered work to a part of the unemployed, while the prices of agricultural products rose considerably. Farming became more profitable and sheep ranges were again converted into farm land. The old landed nobility had lost many of its members and estates in the Wars of the Roses and it became literally a class principle among the well to do to invest a portion of their new wealth in landed property.

The eighteenth century was marked by another enclosure movement and by a serious decline in the number of small farms, although many still persisted. Landownership became concentrated in comparatively few hands and from these estates fairly large holdings were rented out to capitalist farmers. The conditions of tenancy usually included the supply of capital equipment by the landlord. In the nineteenth century the usual lease was for seven, fourteen or twenty-one years. At present it is principally a

yearly agreement. Since the early part of the twentieth century agricultural leaseholds have taken on the attributes of limited ownership through the assurance of fixity of tenure and freedom of cultivation. The last vestiges of feudal tenure were swept away by the Law of Property acts of 1922 and 1925, which provided for only two forms of tenure: freehold and leases for years.

The predominance of leasehold tenure continued without signal change until after the World War, when the high prices of agricultural products led many tenants to buy their lands. Between 1919 and 1924 over 3,000,000 acres were transferred from landlords to occupants. Nevertheless, at the latter date about 76 percent of the land in England and Wales was still occupied by tenants; in 1927 the percentage had dropped to 64 percent. It is doubtful whether capitalistic farming can be maintained with the breakdown of the landlord-tenant system; the possible alternatives at present seem to be either smaller holdings or nationalization, the latter a development that has been widely advocated in England.

In 1924 about one third of the total number of holdings were above 50 acres. Allotments and small holdings had increased at that date because of legislation intended to promote the sale or rental of areas of less than 5 acres so that the laborer might obtain a holding for cultivation as a supplement to his means of subsistence. At the end of 1924 there were 1,170,000 such allotments, covering an area of 168,500 acres; of these many were in urban areas.

In Ireland the Anglo-Norman conquests led to the introduction of the manorial system with the Anglo-Normans as overlords, although the clan system continued to function in part. In the fourteenth and fifteenth centuries England's hold on Ireland relaxed; but with the reconquest under the Tudors the Irish chiefs who had succeeded in becoming manorial lords were replaced by the English, and the clan system completely disintegrated. During the Protectorate, the Restoration and the reign of William of Orange new confiscations and land grants took place. In Ulster the land was largely resettled by the English and Scotch; elsewhere in Ireland the changing of landlords did not alter the position of the tenant, who continued to pay rent for the use of the land.

During the eighteenth and the greater part of the nineteenth century Ireland was a country of large estates and tenant holdings. The landlords were frequently absentees and on many estates middlemen rented and subleased the land. The enclosure of commons toward the end of the eighteenth century increased the difficulties of the tenantry. A more fundamental factor, however, was the tremendous increase of population and its pressure upon the land, which led to increasing subdivision of peasants' holdings. In 1841 more than half the holdings were units of 5 acres or less but the subsequent famines and emigrations led to some reduction in the number of these very small farms. While some tenants held land on long term leases, the majority of tenancies were annual; and the competition for land resulted in rising rents. In Ulster the tenants were protected by the custom that no tenant could be deprived of his holding so long as he carried out his obligations and that he could sell his interest when he decided to give up possession. Here also rents remained more stable, and rack rents were rare. In the rest of Ireland the economic situation, aggravated by political issues, led to constant agitation. To quell it there were passed from 1870 on a series of regulatory acts which established fixity of tenure, assured fair rents and made provision for government aid to peasants who wished to buy their farms. At first landlords could not be compelled to sell their estates, but in the Land Act of 1923 compulsory features were introduced. Through this series of acts Ireland has been transformed into a country of peasant proprietors. Land, acquired through government assistance, is restricted as to subletting, subdividing and mortgaging. These restrictions have tended to perpetuate small holdings, many of them too small to provide a decent livelihood for the cultivator; in 1928 in Northern Ireland 67,625 out of a total of 127,766 farms were of 15 acres or less; in the Irish Free State the ratio was 172,097 to 402,744.

Land tenure in Scotland has had two lines of development, one in the Lowlands and another in the Highlands. In the former feudal tenure displaced the clan system toward the middle of the twelfth century; some fiefs were granted to the Normans but a greater number went to the Celtic chiefs. Feudalism declined early in the fourteenth century, and by the fifteenth peasant emancipation was probably complete. Tenancies became the rule, with land rented on the runrig system; that is, the division of the land into strips periodically reallotted. There were also leases to a group of tenants, each one cultivating a separate plot. Until the second half of the eighteenth

century, when longer leases became prevalent, the usual lease was for a year. In periods when money was scarce rents were paid in labor and commodities. Toward the end of the eighteenth century the runrig system was abolished and large landlord and tenant farms predominated. In recent years the history of land tenure in the Scotch Lowlands has been similar to that of England. Since 1914 owner occupancy has been replacing the landlord and tenant system, while fixity of tenure and other tenant rights in the land have been assured by the Agricultural Holdings acts.

In the Highlands clan tenure based on military service continued until the end of the eighteenth century, although it was officially abolished in 1748. The chief leased large holdings to his leading followers, who in turn rented land to their retainers as tenants at will. Below these tenants there were sometimes subtenants. Rent was paid in services and goods. The grazing lands were held in common and the arable in runrig. Toward the end of the eighteenth century sheep farmers came into the Highlands and began to lease land. This led to rises in rents and the eviction of the small holders. To remedy the situation there was passed in 1886 the Crofters Holdings Act, which gave to a limited group of tenants security of tenure, fair rents and facilities for enlarging their holdings. This was followed by ineffectual legislation intended to provide farms for the landless and to regulate the commons. All the previous statutes referring to land reform were synthesized and elaborated in the Small-Landholders Act of 1911, which applied to all of Scotland and which established compulsory powers for the breaking up and resettling of large estates. So far, however, little has been accomplished in the latter direction.

But now let us turn back to the history of land tenure on the continent. In Italy it was only after the trading cities had developed into rich city republics that the utilization of the land changed at all. These city republics endeavored to attach as extensive and as fruitful an area of supply as possible to their cities in order to insure their sustenance and to render themselves independent of other territorial states in the matter of food supply. Cultivation was extended and carried on more intensively than before, many crops being planted which formerly had been imported from abroad. These changes were accompanied by a proletarianization of the small tenant farmers, who, since the terms of leases were usually severe and tithes as well as land taxes rose continuously, were unable to make a living upon their tiny leaseholds and were frequently compelled to hire themselves out as laborers. As time went on the evolution of agriculture followed very different lines in the various parts of Italy, depending upon the climate and nature of the soil, the extent to which efficient industries arose alongside agriculture and the extent to which the commercial cities facilitated the export of agricultural products. This differentiation was furthered by the rise in Italy of a number of petty states and kingdoms whose land and leasehold laws were utterly dissimilar.

At present a variety of forms of tenure exist side by side in Italy. In the Lombard plain, especially in the provinces of Mantua, Cremona, Milan and Pavia, where the soil is moist, farming is carried on predominantly upon a large scale and upon capitalistic principles. On the other hand, vestiges of patriarchal feudal and leasehold systems persist in many places in southern Italy, while the old latifundia system is still in use in many districts of Sicily. In the latter the estates are rented to a general lessee, who usually reserves for his own use only the pasture land, subletting the arable to small tenant farmers, who are actually merely agricultural workers participating in the crop yield. They are wholly dependent upon the lessee, since their rents are almost always in arrears and they generally owe considerable money to their landlord for advances. Share tenancy (*mezzadria*) now predominates in Tuscany and is widespread in most of the other provinces. In Tuscany the terms are usually equal sharing of expenses and produce, while elsewhere the sharing arrangement is generally less favorable to the peasants. In some sections, where the landowner supplies the capital, he has complete authority over the use of the land; in others the cultivator supplies the capital and directs the utilization of his plot.

Agrarian unrest after the World War led to better terms for the cultivators; tenant farmers won the right to a larger proportion of the produce and greater participation in management. There was also a trend toward simple renting agreements and toward collective leasing. Since the advent of the Fascist regime, however, many of the gains won by the peasants have been lost. There are now standardized terms for share tenancies in the various provinces with which all such tenancies within the designated areas are supposed to conform.

In Spain after the reconquest neither the

clergy, the secular feudal lords nor the tenant farmers aided the advancement of agriculture. After the expulsion of the Moors the irrigation plants which they had erected in southern Spain, especially in the kingdoms of Cordova and Granada, were generally allowed to fall into decay, and Spanish agriculture lagged further and further behind that of the rest of western Europe. A wholly inadequate two-field system was followed throughout most of the country. The three-field system gained some ground but was only partially carried out and was linked with a sort of crop rotation. Tilled land was parceled into three crops, but only one parcel was cultivated at any one time; the second lay fallow and the third was used as pasture.

As the land was reconquered from the Arabs, the influence and the landed property of the church increased and its estates, both the old and the new, were granted further privileges. The nobles and the peasant proprietors continued to make gifts of land to the Catholic church, although the Cortes often endeavored to prevent its accumulation of large estates. The concentration of land was also furthered by the laws of mortmain and entail. Latifundia predominated; in the dry sections the owners or lessees cultivated the land with the aid first of serfs, later of hired laborers. In the rainy areas, however, where cultivation was intensive, the land was farmed by tenants. There were also municipal lands which were rented for cultivation to the citizens of the town. The government frequently compelled the sale of these *bienes propios* to help pay the royal debt. Such sales led on the one hand to the growth of large estates; on the other, to the development of very small holdings.

The trend in Spain for the past two centuries has been toward smaller holdings. In the nineteenth century the laws directed against mortmain and entail released for sale a great deal of church, state and private land, much of which was cut up into small plots. From the middle of the eighteenth century to the middle of the nineteenth the government tried to repopulate the countryside by establishing a number of new villages. Each inhabitant was given a patch of ground as an emphyteuta, on moderate terms and free of taxation for six years. A different system was followed in the establishment of eighteen settlements, mainly upon state lands, between 1907 and 1926. The settlers occupied land for which they made payments over a number of years. After the final payment they were recognized as owners, with restrictions, however, upon their right to alienate or divide their holding; these restrictions were subsequently abolished. During the World War the high price of agricultural produce enabled a number of peasants to buy their holdings, and in 1927 the government worked out programs for converting tenancies into freeholds and for settling cultivators on small farms created by the breaking up of large estates.

According to a survey made in 1925 large holdings predominate in central and southern Spain. In the north and northeast small holdings prevail, often so minute, as in León, Asturias and especially Galicia, that they cannot support the cultivator. In the sections characterized by small holdings owner occupancy is usual but tenant farming also exists. In central, western and southeastern Spain almost 50 percent of the land is held in tenancy, most of the tenant farms being fairly large. Share farming is employed especially in Calmeria and Murcia. In the north the *foro*, an emphyteutic form of lease, is well known; it was introduced in the tenth century and provides for perpetual tenure or tenure for several generations. In 1926 the *foros* were declared redeemable and the government extended credit to those cultivators wishing to acquire ownership. In the Catalonian vineyards the *rabassa morta*, a lease for fifty years or for as long as the vineyard is productive, is common. These emphyteutic leases are disappearing, however, and except in the north short term leases are the rule. Since the revolution of 1931 the collective lease has been inaugurated and a number of reforms in land distribution and land tenure are planned, involving the confiscation of the holdings of church organizations and the nobility.

In France manorial economy lasted longer than in England. The French peasants had to perform less work in the manorial fields than the English but were burdened with more levies and other services. These conditions and the endeavors of the landed nobility to seize the common village lands resulted from the fourteenth to the sixteenth century in frequent peasant revolts. Nevertheless, the common land continued to be monopolized by the nobles. In the meantime the peasants' right to perpetual tenure had come increasingly to resemble complete proprietorship; such peasant tenures were extensive before the revolution. There were also perpetual tenures for which quitrents were paid. After the peasant uprisings of the fourteenth and fifteenth centuries the manorial lords found it profitable to

lease out parts of their demesne land for terms of years. Thus various leasehold systems developed, but they never attained the importance in agriculture achieved by the English. Since the tenants were rarely able to pay their rents in currency, métayage, or share farming, was introduced and spread over western and central France with such rapidity that in the eighteenth century almost 75 percent of the farm land in Sologne, Touraine, Berry, Anjou, Maine and Poitou was in the hands of métayers. The economic condition of the peasant population was not much improved by this leasing system, for the plots were usually too small for profitable farming, while the terms were severe. If the landlord supplied the seed, the necessary cattle and the farming implements in addition to the tract of land, he was entitled to half the crop of grain and sometimes to half the grape and fruit crop as well; if he furnished only the leased tract and half or all the seed, he was entitled to one third of the crop.

The complete abolition of feudal tenures came about only through the French Revolution. But while the peasantry who held land on feudal tenures acquired full ownership, the redistribution of lands through the sale of the confiscated property of the church and the émigrés did little for the landless peasantry. Some of the larger farmers of ecclesiastical lands bought up the acreage they had previously rented; a little went to the wealthier peasantry; but the largest part fell into the hands of the bourgeoisie, who rented it out at first on the métayer system but later increasingly on a rental basis. In the north the métayer system practically disappeared toward the end of the nineteenth century. The return of the common lands to the peasantry was effected by the Convention's law of 1793. The decrees of 1796 and 1797 again deprived the village communities of their rights to various common tracts which had been restored to them, and the law of 1813 declared considerable portions of the village commons to be national property. There has been no systematic enclosure movement in France. Before the revolution consolidation was rare in any of the areas in which the open field system predominated except in Picardy, where large farmsteads existed outside the villages. In the nineteenth and twentieth centuries a slow, continuous consolidation has been effected through sale and exchange.

Holdings in France are generally small, partly because of the subdivision resulting from the laws of inheritance. The decline in the rural population and in births, however, has prevented any notable increase in subdivision in the last seventy-five years. Large estates are comparatively rare and where they exist are usually rented in small allotments. In 1908 the minister of agriculture estimated that there were 2,088,000 holdings of less than 2½ acres, 2,524,000 of between 2½ and 25 acres, 746,000 of between 25 and 100 acres, 118,000 of between 100 and 250 acres and 29,000 of over 250 acres. Although these figures are not completely reliable they nevertheless indicate the general distribution of rural land.

In Belgium most of the feudal attributes of land tenure had disappeared by the end of the eighteenth century, while freehold and leasehold had developed. Early tenancy took the form of métayage and for some time the *cheptel* was also used. Under the latter tenure the landlord leased cattle with the land; the tenant paid a rent for their use and at the end of the term was obliged to return the equivalent of what he had received. There were also emphyteutic leases for church lands, but gradually the ordinary landlord and tenant agreement prevailed. The sale of church and seigniorial property after the French Revolution led to an increase in the number of large proprietors and tenants rather than of peasant proprietors.

Tenancy is still very widespread in Belgium. The competition for land has made rents high, and the tenant has very little freedom in the management of the property. Until recently verbal leases were usually for one or three years while written leases generally provided for a three, six or nine-year term, the latter being most popular. Share farming is rare. In 1929 a law regulating leases was passed which fixed a nine-year period for first farm leases and gave the tenants liberty in regard to crops and methods of cultivation and compensation for certain improvements. Holdings are generally extremely small and scattered. According to a survey made in 1907, 40 percent of the cultivated area was held in plots of less than 6¼ acres, while about 95 percent was held in farms of less than 25 acres. During the nineteenth century, particularly in its latter half, a great deal of common land was alienated. The remainder is usually divided periodically among those with common rights.

In Holland the decline of the feudal system was followed by the purchase of large estates by capitalists, especially in the marsh and pasture lands. The owners generally rented land to the cultivators on leases for years. In the province of

Groningen there developed a special type of lease, *beklem-regt*, which provided perpetual tenure for a fixed quitrent; subsequently these quitrents were redeemed and the leaseholds converted into freeholds. Tenancy is at present widespread, especially in Friesland, but there is evidence of some increase in owner occupancy between 1910 and 1921. In 1921, 48 percent of the agricultural holdings were farmed by tenants; the tenant farms above 1 hectare covered 942,063 hectares as compared with 1,016,122 farmed by proprietors. Land is leased by public auction at high rents and for short terms. Small farms predominate in Holland; more than half are from 1 to 5 hectares in size, while those above 100 hectares constitute less than 1 percent. There are in addition a large number of very small holdings cultivated by persons who are also otherwise employed. In 1918 the government provided financial aid for the establishment of agricultural workers' holdings.

In Germany serfdom persisted even longer than in France, in many cases into the nineteenth century. The conditions of serfdom varied from period to period. On the whole, the burdens of the corvée were not intolerable in the west of Germany until the twelfth or the thirteenth century, when the landlords tried to wring a greater income out of their estates. The German Peasants' War and the complaints and demands made by the peasants to justify their uprising show this change clearly. Aside from minor requests peculiar to certain localities they demanded that their manorial lords be restrained from imposing ever increasing burdens and from exercising jurisdiction over them. They asked also that all old levies, deliveries of cattle and the *Besthauptrecht*, the right of the landlord to appropriate without compensation the best head of cattle from the stock of a deceased peasant, be abolished and that all forests, pastures and bodies of water be again released for common use. These endeavors of the peasants were unsuccessful. Defeated everywhere after long struggles, they again came under the dominion of their former clerical and secular lords and many who had formerly been merely attached to the manor or to the land were reduced to *Leibeigenschaft* (bodily servitude). The Thirty Years' War made the condition of the peasants even worse. At its close in 1648 many provinces in western and southern Germany had only from one quarter to one fifth of their former population. Huge tracts of land were completely devastated and had once more to be made arable. In spite of the prevalent distress the landed nobility endeavored to restore the former conditions of peasant servitude. They were only partly successful in western Germany, and even where restoration took place it was usually considerably modified by subsequent edicts, orders in council and measures for the protection of the peasantry issued by the ruling princes.

The position of the peasants in western Germany just before the emancipation from serfdom was tolerable. In the southwest there predominated the almost free peasant *censier*, whose interest in the land was close to proprietorship and who paid only a nominal quitrent and slight service in return for a hereditary tenure. There were also peasants whose obligations were fairly onerous and who had no legal hereditary rights; customarily, however, the son followed the father in the possession of the land. The vast majority of peasants' tenures were somewhere between these two extreme types.

In eastern Germany the conditions of tenure were much more unfavorable to the peasant. There the manorial lords were the conquerors of the native Slavic peasantry, whose rights were accordingly more easily abrogated. The lords, increasing their domain at the expense of the peasants, who particularly from the sixteenth century were evicted from a large part of their holdings, became capitalist farmers, raising produce for the market and engaging agricultural laborers to work on their vast estates. The peasantry were not completely landless, but their holdings were very small and their rights of tenure and the limitations on their obligations much more insecure than in the west. French revolutionary ideas of freedom and of the rights of man penetrated into eastern Germany at a time when the Prussian government was realizing that under the prevailing rural conditions Prussian agriculture would never reach the height of development attained in England. Its feeling that it could no longer afford to lag behind the states of western Germany, which had abolished serfdom, was reenforced by the fact that the unfortunate condition of the Prussian peasantry was a detriment to the military strength of the state; accordingly in 1810 serfdom was abolished. The corvée duties and institutions related to land tenure were retained although in a modified form.

The reformation had been begun by the decrees of 1808 and 1810. They worked to the disadvantage of the peasants, however, because instead of releasing the land which the nobility had

long before seized in contravention of law they reduced the land owned by the peasants. The landlords, provided they indemnified the peasants, were permitted to seize all the so-called new peasant farms created by eighteenth century legislation for the protection of the peasantry. Moreover the nobility were granted the right to convert peasant land into manorial *Vorwerksland* (a part of an estate separated from the main holdings and possessing its own farm buildings and its own farm management) if a peasant farm of equal size was established elsewhere. A law of 1811 provided that peasants who had hereditary tenures were to be allowed to obtain complete ownership of their land by turning over one third of it to the lord of the estate; those with leaseholds were to cede one half. Where the holdings were too small for such an arrangement, a rent was to be paid. The reactionary nobility opposed the law, and the king ordered that it be reexamined. As a result only the peasants with fairly substantial holdings received the right of settling their tenures; and since a request had to be made for each settlement, it was not completed for many years. Those who did not come within the provision of the reform law received the right of freeing themselves from the services levied upon their plots of land by paying twenty to fifty times the annual value of these services to their landlords; such redemption of their conditions of servitude was granted to 289,765 peasants, who had to pay over 18,500,000 thaler (55,500,000 marks) for their "emancipation" in addition to paying large rentals in produce.

In the east the result of the settlement was the further concentration of the common lands and those of the peasants in the hands of the large holders. In west Prussia, where the manorial lords were not farmers, most of the land eventually went to the peasants. The commons were usually retained for general use, although in some places they were broken up. Recently common lands have become the property of the village or town and are used for its support. Enclosure of scattered holdings, except in a few districts, did not take place until after 1850, and the transformation was gradual.

In 1907 large landholders, mainly in the east, still owned and cultivated about one quarter of the agricultural land of Germany. An attempt was made in 1891 to foster small holdings in the eastern states; the government acquired land from which it rented out small areas on permanent tenure. By 1918, 1,500,000 acres had been used for this purpose. This policy has been furthered by subsequent legislation, notably by the acts of 1919 and 1920. Today the majority of holdings are of less than 5 acres, but a very large number range from 5 to 250 acres.

In the Scandinavian countries the history of land tenure has differed somewhat from that of other parts of Europe. During the Viking period in Norway the landholders had grown rich and purchased additional lands, upon which leaseholds became common. The latter had developed also as a form of tenure on the royal domains and the cleared lands. In the middle of the seventeenth century there were more than twice as many leaseholds as freeholds and only a quarter of the land was held in *odel* tenure. In the latter part of the century, because of the growth of a class of foreign landholders, there was promulgated a decree which taxed large holdings to an extent that made them unprofitable. Tenants bought their leaseholds and small farms increased. This trend has continued and in recent years has been furthered considerably by state support; in 1931, 94 percent of the farmers were freeholders. At present holdings are small, more than 90 percent consisting of less than 10 acres of arable land. Medium sized farms usually have attached to them a number of very small holdings rented on long leases to cotters who ordinarily pay a small sum and also work on the main farm. The government has been helping the cotters to convert these leaseholds into freeholds. Village commons are still found in Norway, particularly in the west; but land farmed under the strip system has been enclosed.

In Sweden the old village strip farming system persisted until the middle of the seventeenth century. During the following century, however, the government succeeded in its efforts to enclose the strips into consolidated holdings. In 1789 ordinary landowners were given the same rights in their holdings as those enjoyed by the nobility in theirs. The period from about 1840 to 1900 was marked by an increase in the number of large farms and the decline in cotters' holdings, which were either taken into the main estate for cultivation or were changed into ordinary leaseholds, for which money rents were given instead of labor. In the last few decades the trend has turned instead toward small farms. These have been promoted by the removal of those legal barriers which hampered the breaking up of estates, by the sale and lease of small farms from the crown domains and by financial assistance by the government. At present small

farms predominate among the 430,000 holdings of more than ¼ hectare. About 33 percent of the agricultural holdings are farms of 10 hectares or less, while those ranging from 10 to 50 hectares comprise almost 50 percent. The large holdings are usually found on the open plains. Tenant farms are not common; in 1911 they comprised only 14 percent of the total number.

In Denmark the position of the cultivator declined steadily from the Middle Ages until the end of the eighteenth century, when the peasants were relieved of labor charges and liberated from bondage. The common field system was abolished and holdings were consolidated and cultivated on leasehold or freehold tenures. From the latter part of the nineteenth century the government has extended aid to leaseholders who wish to transform their tenures into freeholds. Danish policy has in general favored farm ownership, and the percentage of freehold farms has increased from about 66 percent in 1835 to 92 percent in 1919. Until very recently small holdings were encouraged. Now, however, the trend is to increase the size of smaller holdings so that the farmer will not have to supplement his income by outside work. According to estimates made in 1919 over half the total area consisted of peasant holdings of between 15 and 120 hectares. There were 134,639 holdings of 15 hectares or less, 69,955 of between 15 and 120 hectares and 1335 of above 120. Since the World War Denmark has passed especially stringent measures for the breaking up of large estates and for their colonization. State leaseholds have also been instituted and the Danish government plans to decide in 1934 whether it will foster in the future farm ownership or the leasehold.

In Finland land settlement took the form both of the village system and of the isolated farmstead. After the union with Sweden the homesteads of those who volunteered for military service and of their retainers were made tax exempt. These volunteers comprised the nobility, and a system of partial vassalage grew up. Although in the later Middle Ages this system tended to develop also into one of feudalism, the peasants managed to maintain the most important of their ancient rights. The homesteads of the independent peasants were taxed, as were the peasant leaseholds on the crownlands. Gradually both types of tenure came to be regarded as conferring occupancy rights rather than complete ownership and the peasants were not allowed to divide or sublet part of their land. In the eighteenth century, however, peasant ownership was recognized and the leaseholds on crownlands made more secure.

Toward the end of the seventeenth century the growth of large estates was checked by legislation. The effect of these and the later laws regarding tenure was greatly to increase the number of small agricultural tenant farmers as well as of peasant proprietors. Between 1805 and 1901 the number of cotters—that is, tenants who occupied small holdings and paid their rent in labor—increased from 25,000 to 68,532. The number of laborers who owned the very smallest holdings rose from 7000 to 84,221 in the same period. There were also tenants who farmed large holdings which formed parts of even larger estates; of these there were 7772 in 1901.

Since 1892 the government has consistently tried to improve the position of tenants by insuring long terms, just rents and fair conditions and has aided tenants to purchase land. Under the Land Purchase Act of 1918 over 100,000 tenancies on private lands were converted into freeholds by 1928. Similar acts subsequently passed have affected ecclesiastical, civil and state lands. The act of 1922 provided for the compulsory sale of estates for purposes of colonization. By 1924, 64,000 new peasant holdings were created, partly on state land and partly on land taken from large estates. The disposal of any holdings acquired through government loans is restricted by law.

In the countries settled by the English the influence of British tenure has been obvious. Colonial America was settled on the semimanorial system which characterized English landholding in that period. The theory on which the crown gave grants in America to companies and to individuals was that ultimate title remained in the king; and in order to signify the relationship between the latter and the grantee a quitrent was usually stipulated. The smaller holder by an extension of the same feudal theory owed a quitrent and fealty to the proprietor of the colony, although he was completely independent in the control of his holding. The quitrent was due not only from freeholders but also from leaseholders, who were supposed to pay it in addition to the ordinary rent; and it existed in all the colonies except Massachusetts Bay, Plymouth, Rhode Island and Connecticut, where tenure was alodial. Although they were sometimes merely nominal and never constituted a serious burden the quitrents were resented by the colonists and frequently left unpaid. When they were paid, there were insistent demands that they be ap-

plied to the public revenue. After the revolution they were abolished in most of the states and became dead letters in the others, so that now all landownership in the United States is alodial.

While village settlement was attempted, especially in New England, it yielded everywhere to separated farmsteads. The medium sized farm was the rule in the northern and central colonies except in New York, where the Dutch manorial holdings in the Hudson valley were confirmed by the English governors. The Dutch estates comprised from 50,000 to 1,000,000 acres, but for cultivation they were broken up into smaller units. In the south there were a number of large plantations which after the Civil War and the emancipation of slave labor were broken up into small farms usually rented on a crop sharing basis.

After the revolution large quantities of public land were available for settlement and later more was acquired by purchase and treaty. Its distribution was effected at first by sales, which led to the accumulation of large holdings by individuals, and later by preemption and homesteads, which fostered a more equitable distribution of landownership. It was only after 1880, when most of the good land had been occupied, that tenancy, which had existed even in colonial times, became an important factor. The agricultural depression following the era of land speculation after the World War, with its accompanying inflation of land values and mortgages, has accelerated the trend toward tenancy. The percentage of tenant farms has risen from 25.6 percent in 1880 to 42.4 percent in 1930. Tenants hold their land generally either on payment of a cash rental or of a fixed amount of the crop or, especially in the south, on a crop sharing arrangement in which the landowner provides the capital and directs cultivation. The usual lease is for a year.

Holdings are today predominantly of small and medium size. The larger holdings are more prevalent in the west, where capitalistic farming is common. In 1930, 44.8 percent of all the farms consisted of from 20 to 99 acres; 36.8 percent from 100 to 500. Of the remainder farms under 10 acres constituted 5.7 percent, while those of 1000 acres or more were 1.3 percent.

When the British conquered Canada they assumed sovereignty over the French settlements, which had been established on the feudal system of land tenure prevalent in France during the period of colonization. On the manors of New France, however, there was usually no absentee proprietorship and the obligations of the peasants, or *habitants*, which included rent, reliefs, *banalités* and the corvée, were not onerous. The obligations of the seignior included the payment of the mutation fines, the cultivation of the land and after 1711 its subinfeudation. Rents were paid in money and produce and were fixed by agreement or the custom of the community. For political reasons the British perpetuated the existing feudal system and even contemplated extending it. It had, however, begun to lose its vitality even before the conquest, and in the following century its abolition was demanded partly on the ground that it interfered with free transfer and partly because many of the British who had become seigniors and were generally more exacting than the French with their tenants had excited sentiment against it. The transformation of feudal into *franc-aleu roturier* tenure, which was very much like free and common socage, was effected essentially by the compulsory act of 1854. French procedure in regard to alienation, devise and inheritance was retained. The obligations of the *habitants* were replaced by a fixed annual rental, which could be terminated by a lump sum payment; but of this privilege they were slow to avail themselves.

In English speaking Canada freehold grants were made, subject to a quitrent and the obligation of partial cultivation. Nevertheless, great blocks of land were accumulated by speculators. The central administration attempted to check this abuse, which was leading to economic stagnation and political unrest, and to foster small family tenures. After they had attained self-government the provinces continued this work by disposing of lands through sales on easy terms and through homestead laws.

The heavily wooded areas of eastern Canada prevented the development of large farms, and the types of land utilization which have developed in this region, such as dairying and fruit growing, have kept holdings pretty much to the original size. In Quebec French laws of inheritance favored subdivision and the great majority of farms in eastern Canada are of less than 200 acres, perhaps too small for remunerative cultivation. In the grain growing prairie provinces of the west the dominant type of holding introduced was the free homestead of 160 acres. At various times preemption of additional land has been permitted. The average farm, which is much larger than that prevailing in the east, was of 335.4 acres in 1916 and 358.4 in 1926. The character of the land and its product, the increas-

ing use of machinery and a certain amount of land speculation have contributed to this growth in size. As in the United States the exhaustion of good homestead land was followed by the development of tenant farming, which is more important in western than in eastern Canada. Nevertheless, Canada remains a country of small family farms cultivated by their owners.

Australia like Canada was subjected to the free grant system and its abuses. This came to an end in 1831, when as a result of Wakefield's influence land was ordered sold by auction at a minimum price successively raised from 5/- to £1 an acre. Since much of the best land had been alienated, Australia became "the dearest land market in the world" and settlement ceased; even in South Australia, where Wakefield's ideas received special application, the results were rather poor. More important in its influence upon land tenure was the rise of the wool growing industry. In 1827 within the nineteen counties of New South Wales the extensive runs of the pastoralists, who had soon established themselves as squatters on the public domain, were placed under annual licenses and fees. In 1836 licenses were granted for areas beyond these counties, but the holders had no security of tenure nor property rights in improvements. But in 1847 the land was ordered divided into three categories, based upon the degree of settlement, and was leased to the grazers for periods ranging from one to fourteen years; during the term of the fourteen-year lease the lessee had exclusive rights to purchase the freehold. In other colonies the squatters although powerful were not as firmly intrenched in their privileges and the law was not enforced.

The gold rush, beginning in 1851, brought settlers who eventually turned to agriculture; and soon afterward the agricultural interests introduced the system of free selection before survey, which in many respects resembled the American homestead, although the land was purchased on instalments. But the squatters retained control of the land by devious means and converted their leaseholds into extensive freehold estates. The small family holding gained significance when technical advance made possible the development of grain raising and dairying and when foreign markets were provided. It was furthered by legislation to assist small holders financially and otherwise and to break up large estates suited to cultivation by voluntary or involuntary sale to the state, and possibly also by the tax on land. The pastoralist is now given land beyond settlement limits on leases for terms as long as twenty or forty-two years, sometimes with periodic revision of rentals. The small settler generally acquires land on "conditional purchase," which includes residence and improvement conditions, with twenty years or more to pay. The Labour party has wherever possible replaced alienation in freehold by perpetual leases and periodical reassessments of rents. The differences between conditional purchase tenure and leasehold have become almost infinitesimal, and it is doubtful whether the latter will prevail outside of territory under Labour control.

The dominant form of land tenure on the Australian farm is freehold. A certain amount of tenancy has also grown up on private lands; for wheat raising, dairying and other agricultural pursuits share farming has developed in New South Wales since the 1890's. Absenteeism has been considerably reduced and the number of very large holdings has steadily diminished; the latter process has been aided by the high prices for land which have characterized boom periods. Although small holdings have been increasing in number, many are added to neighboring larger holdings by sale; the number of medium sized and moderately large holdings does not seem to be declining and may even be increasing. A study of the size of holdings in Australia must take into consideration the fact that the environment tends to make a small holding much larger in actual area than a similar holding in Canada; this is particularly true in the case of land devoted to grain growing.

Early in the course of its colonization New Zealand threatened to fall into the hands of land speculators, but this danger was checked by the British government and its representatives. The principle of the sufficient price was introduced into the alienation of public lands, and by 1850 compact settlements on the Wakefield model had been established in various areas more successfully than in South Australia. Sheep raising developed, however, and in 1851 the New South Wales system of pastoral leases was introduced. About the same period legislation to establish small settlers was enacted, and there took place the struggle of pastoralist and agriculturist, with the same results as in Australia. Provincial control of the disposal of public lands permitted land speculation and the growth of large estates, and although the provinces were abolished in 1876, it was not until the 1890's that effective land reforms were instituted. They included financial assistance to farmers, a progressive tax

on unimproved land value and compulsory repurchase of land for resettlement.

In 1882 there had been introduced perpetual leases of small holdings on the crownlands, providing for revision of rentals after the thirty-year initial period and after the subsequent renewal period of twenty-one years but permitting purchase of the freehold. Under the reform system there was substituted a lease for 999 years, known as "lease in perpetuity," with freedom from revaluation but not from the graduated land tax. The right to obtain the freehold was withheld; but under another tenure, known as "occupation with right of purchase," land could be taken up for twenty-five years at an annual rental and at the end of a certain period could be acquired in freehold or upon lease. After 1926 no more leases of this type could be made. Freeholds could also be obtained for cash. The various reform measures together with rising land prices aided the development of the small family holding and the break up of land monopoly; compulsory measures were used only sparingly. In 1907 the leases in perpetuity were abolished and tenants holding them were given the right of purchase; the principle of freehold has since been constantly extended, even to pastoral tenancies. The entire controversy over tenures has been complicated by the question of speculation and has been relatively unimportant, since much of the best land was alienated in freehold before the reform era.

The characteristic form of rural property in New Zealand is the small dairy farm held in freehold. Share tenancy has also developed, especially upon dairy farms. The terms are settled by bargaining; frequently there is inserted in the agreement a compulsory purchase clause which enables the share milker to acquire the land and stock.

In South Africa the Dutch East India Company had introduced freehold tenures for small agricultural holdings in order to insure the necessary agricultural supplies. It had also encouraged stock raising and for this purpose leased or loaned extensive tracts of land (over 6000 acres) for a year at a time at a uniform fixed fee. As the market for agricultural produce was limited and as capital and labor were scarce, the pastoral industry naturally developed; with it spread the loan tenure system, which had been designed for it and which became the dominant form of holding in the eighteenth century. The company favored it as a source of revenue. The scantiness of pastures and lack of water in the interior, which kept the stockmen constantly moving, or trekking, made the short term of the loan tenure desirable. Conversely, however, its insecurity favored the trekking habit; and to correct this evil new forms of holding were introduced, but they were less attractive and remained comparatively unimportant. The disadvantages of loan tenure to the tenant with respect to sale, inheritance and insecurity seem to have been more potential than real; but in 1813 the British, noting the economic defects of the system allowed the conversion of loan leases into perpetual quitrent tenure, which was also to be the form in which subsequent grants were to be made. Conversion of the loan tenures was very gradual. Some holdings of a different character were converted into absolute freeholds. Although since 1860 it has been possible to transform quitrent tenures into freehold, both forms have continued to exist down to the present.

The securing of revenue seems to have been the determining factor in land tenure in Cape Colony and Natal throughout most of the nineteenth century. The stricter land policy of the British contributed to the trekking which resulted in the founding of the Boer republics, where land was given out in freehold or quitrent tenures in the extensive plots that had characterized the colonial period.

The extensive areas of the holdings and the great risks of South African farming facilitated the growth of share farming by natives, who often remained as squatters upon the land when it was divided among the white settlers. The exhaustion of the supply of fresh land, the agricultural revolution which resulted in the ruin of many farmers who clung to the highly inefficient methods to which they were accustomed and a system of inheritance favoring extreme subdivision have led to a landless class of "poor whites," who have also supplied recruits for the ranks of tenant farmers. The tenancy agreements have no general form and are oral and informal. Changing conditions and the competition for land have tended to break down the customary system, under which the white tenants were relatively well off, and to depress them to the status of mere agricultural laborers receiving wages for the cultivation of their plots. The condition of the native is even worse, for his opportunities of holding land are in most of the provinces restricted by law; in the Orange Free State native share agreements have been outlawed entirely. A considerable amount of cash tenancy has developed, however, with tenants drawn from

the better class of white share farmers. Among white tenant farmers cash tenants are more numerous than share tenants, and while tenant holdings constitute more than one third of the total number of white men's holdings they cover less than one fourth of the area occupied by whites.

Very little has been done to check the growth of large holdings nor has public attention in general been centered on the reform of the land system. Although measures to facilitate land settlement were taken by the provinces before union and since then by both the provinces and central government they have not gone to the root of the problem. These measures include financial aid, subdivision schemes and alienation of public lands on lease, usually with purchase rights; the purchase of pastoral areas has also been made possible.

HEINRICH CUNOW

EASTERN EUROPE AND NEAR EAST. A survey of land tenure in eastern Europe discloses great geographical and temporal variations as well as many paradoxical traits. In earlier periods although the region was under the sway of great empires it contained many diverse land systems; at present, although it is divided into a number of states, almost uniform conditions of tenure prevail. Such a change points clearly to a lack of continuity and to the fact that the system of tenure as it exists today is the result not of economic and social evolution but rather of political upheavals. Every fundamental political change upsets the relations between rulers and ruled and in a region which is primarily agrarian is reflected above all in the conditions of land tenure. Hence the paradox that traditional rural ways have best survived where government has been least organized, especially along the route of the great migrations north of the Danube, where neither Roman nor Byzantine nor Ottoman power was able to establish itself. There is also the contrary phenomenon that in recent times, after national emancipation and until the World War, agrarian conditions have been best where Turkish rule had been worst. The various influences —Roman, Byzantine, Slav and Turkish—which have affected eastern Europe have left different traces in various parts, depending upon political circumstances; the corridor between the Danube and the Carpathians, for example, which was a meeting ground for all these influences, was also from a political standpoint a dividing line between them and in some curious way escaped both the Byzantine feudalism that prevailed south of the Danube and the Germanic feudalism that prevailed west of the Carpathians.

The social structure of rural society is the result of two elements: the relations within the family and village community, and those between the ruling class and the mass of the peasants. Two main types of landholding were prevalent in the eastern half of Europe: the Latin-Germanic type based upon individual and individual family property, and the Slav type based upon joint property. The first was found in the south of the Balkan Peninsula, where even during the Turkish regime it persisted in the highlands, on the islands and on the Dalmatian coast, which was open to Latin influence, and whence it penetrated into the lands of the southern Slavs; it predominated also in the countries bordering upon Russia and subject to Germanic influence. In the Germanic type the ownership of the hide and its management were vested in the individual family. This was also true in the main of Poland, the Baltic countries and certain parts of Galicia, Bukovina and the Banat. In the Slav type the family clan, consisting of parents and of married sons and their offspring, was the unit of economic organization, which took the form of the *zadruga* (*q.v.*) among the southern Slavs. Ownership of land was vested in the family clan as a whole, whose affairs were generally managed by the elder. When the clan grew too large it broke up into smaller groups. The pasture and forests were as in the Germanic system the common property of the villages formed from these groups, but the title to the arable remained in the groups themselves. The tendency toward subdivision continued and the family clan has survived only in the southern Slav countries, where it was favored by the Turkish landowners; here too, however, it is rapidly disintegrating.

Early Rumanian tenure was of an intermediary type. The village lands consisted of undivided meadows, grazing land and woodland owned and used by the whole village and of arable divided into equal holdings, each household being entitled to one. Arable (*ţarina*) and homestead were family property, hereditary but indivisible, and the power of the elder to dispose of it was limited by the rights of *protimesis* and of reclaim, even after a judicial decision, vested in his children, relations and neighbors. The holding was thus a joint but not a common property; the system knew neither the absolute individual property of Roman-Byzantine law nor the absolute communal property of the Slav.

Besides the free peasants most Rumanian villages in the Middle Ages contained a group of settlers called *vecini* (neighbors). They were probably originally prisoners of war and were bound to the land. The resemblance between Slav and Rumanian family holdings was held by one school, represented by A. D. Xenopol, C. Disescu and others, to be due to the influence of Slavic institutions; by another school, that of E. de Martonne, N. Iorga and others, it was considered accidental. While the evidence is extremely scant, it gives point to the view advanced by Pârvan and Fotino that Rumanian tenure was of a pre-Slavic type of Thraco-Illyrian origin sprung from agrarian conditions, whereas the Slav probably had its roots in the communal organization of the family ruled by the father or chief, which already existed among nomadic groups when the common property consisted of movables and rights of use.

Upon these popular institutions two rural systems were superimposed: the Germanic feudal system in the Baltic countries and in the provinces of the Hapsburg empire and the Ottoman system, originally theocratic in form but later very similar to western feudalism, in most of the Balkan Peninsula. In Dalmatia and the Ionian Islands other forms of feudal tenure were introduced by the Venetians.

In the Austrian provinces feudal relations were found, after the decline of the Croatian dynasty, as early as the twelfth century, and by the end of the seventeenth century the mass of the peasants had become serfs. Enormous estates were concentrated in the hands of newcomers, who received them as gifts from the emperors. The *kraïna*, or military frontier, formed a peculiar exception. It was a strip of territory along the Turkish frontier which was colonized with Slav, Hungarian and Rumanian peasants, organized into regiments and free from all feudal servitudes, with an autonomous regime not unlike that of the Cossacks in Russia. Each regiment owned extensive tracts of communal pasture and woodland. The system was created in 1630 and lasted until 1881; individual regiments persisted until the reforms following the World War, no longer as military groups but as collective owners. In Poland and Lithuania also there existed numerous estates cultivated on a large scale.

In the domain of the Ottoman Empire the subjection of the peasantry had begun during the decline of the Byzantine Empire. The local nobles entrusted with the collection of taxes used their positions to encroach upon the land of the free peasants. This tendency was quickened by the feudal ideas brought in through the crusades and especially by the flight of the peasants, which caused various regions to be settled with Slavic serfs. In Serbia the code of Czar Dušan introduced in 1349 a feudal regime, which had already been adopted by the Bulgarian landlords. Thus on the eve of the Turkish invasion the greater part of the land, especially in the plain, belonged to the sovereign, to the nobles and to the church, particularly to its monasteries. Where the landowners offered voluntary submission, the Turks allowed conditions to remain unchanged. Most of the smaller and some of the larger properties were left in the hands of their former owners but subject to an ultimate title in favor of the state (*mirié*) which limited the right of disposal. The properties of resisting nobles as well as land which had once belonged to the state became the domain of the sultan, who was absolute master of all conquered land. Part of the land was granted to Turkish dignitaries (beys, begs and agas), either as freehold (*mulk*) or as fiefs (*mirié*). Ecclesiastical and other properties were handed over to Mohammedan religious foundations and held as *vakuf*. Much of the *mirié* land was by forcible means transformed into the large private estates of the *spahis*, the military governors under whose control they stood. These estates together with the villages attached to them were known as *chiflik*, or *chitluk*, and the servile peasants who cultivated them as *chifchije* or in the northwest of the peninsula as *kmeti*. As in the Roman colonate the land was farmed in métayage, the landlord receiving generally one half of the produce of arable land. In the territories of the old Ragusan Republic traces of the original colonate system remained. The severity of the system varied in different parts of the peninsula. It was hardest in the center and in the east; that is, in the broad fertile valleys and in the parts nearest to Constantinople, which alone were inhabited by a dense Turkish population. A considerable number of free peasant owners survived in the western and southern parts; their distance from Constantinople and the main lines of communication as well as the high land and extensive forests, more suitable for pastoral pursuits than for corn growing, favored the imposition of the *chiflik* regime only in an attenuated form. Their relative freedom was also due to the nature of the Turkish administration, which preferred not to interfere with the more inaccessible districts but to leave the local leaders to act as in-

termediaries between the authorities and the population. It is in such regions that the *zadruga* has survived.

Serfdom disappeared in most countries of eastern Europe about the middle of the nineteenth century not only under the influence of liberal ideas but also as a result of financial necessity; for as the noble landowners paid no taxes, peasant holders became an asset to the state. The Hapsburg monarchy abolished serfdom in 1848 and the peasantry acquired full ownership of their land except in Dalmatia, where even partial liberation did not take place until 1878. In Poland serfdom was abolished in 1864. In the former provinces of the Turkish Empire the national revolutions were to an equal extent social revolutions; and in the absence of a native middle class their success generally accomplished what elsewhere had been two separate and at times opposed steps in rural reform: emancipation from semifeudal conditions and the vesting of the former serfs with the ownership of their holdings. This phenomenon was possible because in such provinces as Serbia and Bulgaria the native ruling classes had been exterminated. The *chiflik* system thus broke up wherever the frontiers of Turkey receded, except in Thessaly and in Bosnia-Herzegovina. In the latter many members of the ruling class had become Moslems and were able to maintain their semifeudal domination. Austria-Hungary had merely facilitated the voluntary emancipation of the *kmeti*. From the occupation in 1878 until 1910, about 28,500 families were freed; the law of 1911 accelerated the process and 13,000 families were freed on 102,000 hectares in 1912 and 1913. Upon the annexation of Thessaly to Greece by international treaty in 1881 the rights of the Turkish landowners had to be recognized and redeemed and the former duties of the peasants in some measure maintained. In the remainder of Greece the Turkish national estates and those of the large owners had passed to the state, forming two thirds of the arable in the new kingdom; after 1836 they were gradually distributed to small holders against compensation. In Serbia the land was at once occupied in full ownership by those who had tilled it. In Bulgaria the land first passed to the state, but the holders were gradually made into free owners as the state abandoned its title to the *mirié* lands in favor of the cultivators.

In the provinces north of the Danube the Turks had left the agrarian regime intact. The Rumanian peoples had not had an aristocracy: the *cneaz*, or *județ*, was merely the head of the village in peace and in war, entitled to a holding of his own, to a tenth of produce from arable and to some small labor dues. The labor dues of the *vecini*, the unfree settlers, were heavier but by no means onerous. Because of a number of circumstances the authority of the *județ* gradually increased and many of the free peasants became *vecini*, but it was not until 1595 that the villagers were bound to the land by Mihaiu the Brave. The latter created a professional army on a feudal basis to take the place of the traditional *levée en masse*; he supported the interests of the leaders because they formed part of the army and allowed exactions from the villagers because he needed supplies. Because of this and other factors there gradually arose a class of large owners, boyars, but they never achieved the power of a Turkish bey or of a western lord. Their title to the land was limited in that two thirds of the estate was reserved for peasant use; every newly married couple was entitled to a holding measured by the number of large animals owned by the household. Moreover as the many princes who followed each other on the thrones of the Rumanian principalities depended on the favor of Constantinople rather than upon the support of the boyars, the latter were seldom encouraged and were sometimes thwarted in their attempts to reduce the holdings and the freedom of the villagers. It was only with the actual end of Turkish domination and its replacement by a Russian protectorate that the Rumanian ruling class, which had never been displaced by the Turks but only permeated with Greek elements, was able to subject the mass of the peasants to real serfdom and to infringe extensively upon their rights of tenure. The *Règlements organiques* of 1831 recognized the former village leaders as the proprietors of the lands which were under their jurisdiction and the concept of actual property in the land as apart from use first arose. The peasants' rights of occupancy were recognized, but their freedom of movement was limited and heavy labor dues were enacted. The general effect of these laws even after their modification was to reduce peasant holdings while increasing the estates of the boyars. After national independence was established, serfdom was abolished in 1864. The peasants were given holdings according to the number of cattle they owned; and many were settled on the state domains. They lost their ancient title, however, to two thirds of the arable and were left with less land than before and with heavy redemption dues and taxes. Large properties were further enlarged

and consolidated. The large estates were except in rare instances tilled by the peasants with their own implements and teams, either under the usual system of sharing the produce (*deavalma*) or under the more peculiar institution of *tarla*, under which the peasants cultivated a piece of land for the owner in return for a similar piece for their own use. Political reasons explain why large personal estates came into being only north of the Danube—those in Rumania of a latifundiary character, those farther west and north rather of the Germanic feudal type. In Serbia and Bulgaria the small and medium holding predominated.

The Ottoman land system was extremely complex and substantially different from both the Roman and the Germanic types. It was based upon Islamic law, but the latter was variously interpreted to suit actual conditions. It is not possible to trace a uniform principle through these variations of policy nor a chronological sequence through the various forms, which mostly existed side by side. The Koran prescribed that conquered land should be divided among the victors. Social and economic reasons precluded this when the empire expanded widely and quickly. While part of the conquered land was given to the victorious military leaders against the payment of a tithe (*ushuri* land), in the more distant regions especially it was left to its former owners as tribute paying land (*kharadji*). Except where strategical reasons intervened it was not in the interest of the state to extend the tithe paying private property at the expense of the tribute paying property.

In Turkey proper the conditions which had given rise to the agrarian system had lost their meaning; but because of its religious basis the system remained, bound by tradition. The Ottoman Land Code of 1858, which synthesized and reformed the general laws of tenure, recognized the five orthodox classes of real property, each subject to different rules, which were based mainly upon Islamic and only to a small extent upon Turkish civil law. There was *mulk*, held in absolute ownership and subject only to a special tax. The title could be sold, mortgaged, given in gift, left as inheritance or converted into *vakuf*. *Mulk* included sites of dwelling houses in towns and villages and a limited amount of land appurtenant to them, land given as *mulk* by state grant and tithe paying land as well as tribute paying land which at the time of the conquest was confirmed in the possession of non-Moslem inhabitants. *Mirié* was land of whatever kind granted by the state to insure proper use and of which the title remained in the state. If the owner neglected the property without good cause the gift could be revoked by the state; this was, however, rarely done. Otherwise the owner of *mirié* could dispose of it in the usual ways after complying with certain formalities that implied the consent of the state, which was never refused. *Vakuf*, which was land held by religious foundations in mortmain, was the most important category, because of its development in the Ottoman Empire (although it also was in existence among the Arabs), where, before the recent reforms, it comprised two thirds of all real property. At the conquest the sultans transformed one fifth of the land into *vakuf*. Private necessity was responsible for its enormous extent, for as elsewhere in the Middle Ages land was given to the church to make its transfer to the owner's heirs secure against political vicissitudes. Very rarely was *vakuf* made absolute: the deed was final, but the donor could lay down conditions both as to administration and the assignment of revenues to beneficiaries. A usual condition was that he and his heirs should remain administrators (*mutevelli*). The general administration of *vakuf*, except that belonging to non-Moslem foundations, was in the hands of a special department, the *Evkaf*. *Mewat* was waste land uninhabited and unused; anyone who cleared and cultivated it with the consent of the authorities acquired certain rights of ownership. *Metruké* land could not be privately owned. The title belonged to the state, which could hand over possession to specific bodies for common use—as communal woodland or pasture, threshing floors, fair and camping grounds.

Turkish law knew the right of preemption (*choufa*) by means of which a third party could prevent or rescind a sale. The joint owner of a property could exercise such a right if the other owner wanted to sell his part; or it might be exercised by the joint possessors of a right of use of such an improvement as a thoroughfare or well on the property to be sold, or by immediate neighbors of such a property. The right of preemption was limited to *mulk*; it could not be invoked by a *mulk* owner with reference to *mirié* or *vakuf*. A similar right of preference (*rudjhan*) applied, however, to *mirié*; and it also belonged to the owner of *mulk* trees, plants and buildings on *mirié* land. Again, a certain number of persons had a claim to *mirié* land if its owner died without an heir capable of succession. This right (*tapou*) belonged, against due payment, to those

who might inherit *mulk* trees or buildings found upon that land; to the partners of the deceased; and to local inhabitants to whom possession might appear necessary. The right of *tapou* was not transmissible by inheritance. When the owner of *mirié* died without leaving heirs or claimants of *tapou* or if the latter did not make use of their right within certain periods of time, the land was declared vacant and turned over to the highest bidder. *Tapou* did not apply to *vakuf* lands, which when they became vacant reverted to the pious foundation to which they were dedicated.

Under Turkish law ownership of land did not include the subsoil. Special concessions were needed for exploiting minerals and quarries; they were given for limited periods, usually ninety-nine years for mines and shorter terms for quarries; they were subject to various dues. The possessor of the land, whatever its category, had first claim to such concessions.

The current for reform (*tanzimat*) that made itself felt in Turkey about the middle of the nineteenth century together with the political necessity of improving the position of the Christian peasants led to the law of 1856. This sought to regulate land property on the basis of western principles, with an added obligation to cultivate the land. An attempt was made to suppress fiefs in 1839 and their beneficiaries were replaced by tax farmers and tax gatherers. These in turn were abolished and the Land Code of 1858 provided for direct relations between the government and the peasants. It also forbade the creation of a new *chiflik* except in unpopulated regions, although it did not interfere with those that existed. The reform became effective only with the success of the Young Turk movement. The law of 1913 maintained the various categories of real property but in practise unified their position; *mirié* and *vakuf* were allowed to circulate as freely as *mulk*. After the war *vakuf* property, the chief object of reform, was placed under the supervision of a general directorate. As much of the *vakuf* land has been for centuries under private management, the directorate controls effectively only a small part; in 1928 its revenues amounted to only £T3,489,000. The directorate has come increasingly under the control of the state. It is now under the Ministry of Finance, and the government claims the bulk of the revenue for educational and social purposes. Both developments point to an early extinction of the *vakuf* system.

In the absence of all statistics one can make only general distinctions between large and small property. The former preponderated in European and Asiatic Turkey as in eastern Europe; it was the result, however, not of economic factors but of the power of the ruling class, of the burden of taxes and their promiscuous imposition, of wars and long periods of military service and of general insecurity. The same reasons explain the growth of mortmain and of state and crown domains. In Turkey as generally in eastern Europe large property did not mean large scale farming. Most of the owners were absentees, occupying official and other positions. Some of the estates were farmed under the bailiff system; that is, under the supervision of a bailiff for the owner. Much more widespread was the *yaridji* system, a sort of métayage under which a tenant rented the estate and divided it among the peasants, supplying the seed and receiving in return one half to one third of the harvest. Warburg estimated in 1918 that in the various provinces peasants owned 15 to 50 percent of the cultivated area. More recently Sadi has estimated such peasant property at 85 percent. War and exchange of population have no doubt greatly increased the number of peasant owners, but the latter figure must include at least peasants on the state and *vakuf* lands, who although generally left undisturbed are only hereditary tenants.

In Egypt at the time of the conquest the characteristic holding was the large private estate; the peasants were bound to the soil and the organization of the estate was somewhere between the colonate and the manor. Under the Arabs the landed proprietors were displaced by Moslem tax gatherers. Although theoretically all the land belonged to the Arab state, some of the confiscated territory was granted to the Arab chiefs; these holdings, which were alodial in tenure, were called *ushuri* and were subject only to the tithe. The most important category of land, however, was the *kharadji*, or tribute paying land. The system of military fiefs, which had become widespread under Saladin, was adopted by the victorious Mamelukes when they usurped the lands of the earlier fief holders. Under the Turks the land not held in military fiefs was generally under the control of the tax collectors, the *multezimler*, who were given special plots of land upon which the fellahin were obliged to work. The *multezimler* tended to assert proprietary rights in their tax districts and to preempt privileges similar to those of the fief holders. During the Ottoman rule both exercised rights amounting to ownership over their holdings.

The countless predatory privileges assumed by the ruling class through the centuries had deprived the peasantry of most of their rights; the process was completed by Mehemet Ali, who began in 1808 the confiscation of most of the land, assuming for himself as ruler the ownership of almost all the soil of Egypt. From this he made grants to members of his family and to certain notables. In 1858 under Said Pasha a new law gave to the fellahin almost freehold rights in the soil; about one fifth of the arable land, however, still formed the domain of the khedives and was farmed for their account, largely by forced labor. It was only under Ismail that these khedival estates were ceded to the state and divided into individual holdings, each adult fellah receiving from three to five acres of land in ownership.

At the time of the first International Commission of Inquiry into Egyptian Finance in 1878 it was estimated that in 1877 3,487,000 acres of land were classed as *kharadji*, paying taxes amounting to £E3,143,000, while 1,323,000 acres of *ushuri* owned by the native upper class was paying only £E333,000 in taxes, roughly one third of the tax paid by the fellahin. There was also a great deal of *vakuf*, usually rented for long periods. The difference between *kharadji* and *ushuri* has now practically disappeared since both are held in full proprietorship. In Egypt today small holdings predominate: in 1928 out of 2,121,009 landowners 1,964,912 held less than 5 feddans (a feddan equals 1038 acres) and owned a total of 1,697,683 feddans; there were 144,345 owners of between 5 and 50 feddans, who had altogether 1,724,471 feddans; while 11,752 owners of more than 50 feddans each had together 2,002,944 feddans. The owners of large estates usually cultivate them directly with the aid of fellahin, who receive a small money wage and usually also a feddan of ground each to cultivate for their own use. The medium sized holdings are generally farmed by peasants on share tenancies. The smallest holders frequently rent land from larger landholders in addition to cultivating their own plots. Small proprietorships have been furthered by the sale of government lands to small holders on easy terms.

The political readjustments following the World War caused profound changes in the rural structure of eastern Europe. In annexed territories the owners of large estates were often of a different nationality; the peasant soldiers had been promised land. To these factors must be added the general revision of ideas concerning property and above all the impact of the Russian Revolution. Expropriation and resettlement were carried through in almost all the countries of eastern Europe upon a revolutionary scale and with a wide disregard for traditional conditions. Two main traits are common to these measures: they have swept away all remnants of feudal servitudes, completing in eastern Europe the work begun in the west by the French Revolution; and they have aimed to give some land—and thus economic independence—to most peasants and to as many as possible a sufficient family holding. The latter aim has been reenforced by an effort to prevent the revival of large estates by limiting the amount of land which may be owned by one man. The exceptions are Hungary, where the landed class has regained its former influence, and Poland, where settlement in the former Russian provinces has been used to stave off in some degree the demand for land in Poland proper.

These measures were all inspired by the same social and political reasons; dictated by the need of the moment they paid little attention to custom or to economics, and they were sudden and simultaneous. The general effect has been to render land tenure almost uniformly individualistic and egalitarian and to base it upon use. It has become individualistic in that the number of properties has been enormously increased and that they have been freed of all feudal and other servitudes; even existing financial obligations can be levied only upon the price paid but not upon the land itself (Rumanian Law of 1921, art. 73–76; Greek Law 2052, art. 22; etc.). The egalitarian tendencies are obvious in two facts: the holdings are uniform in size, as fixed by law, based not upon economic or geographical conditions but upon the relation between the available area and the number of claimants; and the remnants of the large estates have also been equalized according to a legally fixed scale. Moreover the land is to belong to those who till it. For this reason mortmain is generally prohibited and in Greece, Rumania and Bulgaria absentees are expropriated, a minimum being left to large owners who used to let their land. The principle is formally proclaimed in a large number of the new statutes (Poland, Resolution of 1919, art. 2; Bulgarian Law of 1921, art. 1; Greek Law 2052, art. 31; Rumanian Law of 1921, art. 122). Linked with this principle are the prohibition against selling or mortgaging either at all times (Greek Law 2052, ch. vi) or during a given period (Bulgarian Law of 1924, art. 15: twenty years; Ru-

manian Law 1921, art. 120: five years after obtaining final title to the holding) and the state's right of preemption in sales of agricultural land. Finally, the same view has led to the transfer of forests to the state or to communes for joint local use (Rumanian Law of 1921, art. 28, etc.; Yugoslav Preliminary Instructions, 1919, par. 17; Bulgarian Law of 1921, arts. 2–4; Greek Law 2052, art. 52; Czechoslovakian special law of 1919; Polish decree of 1919, etc.). In Rumania and elsewhere the state has also become owner of all mineral deposits.

Thus in general ownership now coincides with exploitation. Tenancy has become insignificant: the area available for it is in any case small and the remnants of the large estates can be farmed profitably only by direct intensive cultivation. The essential nature of land tenure is now so uniform throughout the region that differences between countries or provinces relate merely to the size of the holdings.

The change in the distribution of land cannot be stated in exact figures, for the process of transfer is not yet ended and statistics are not complete and are sometimes conflicting. But enough is known to show the enormous change in the relative position of large and small property. In Estonia 1149 large estates covering over 2,000,000 hectares, or 58 percent of the total area, were taken over by the state in 1919. Of this confiscated area about one half, which was made up of woodland, remained under state control and one fourth was left to former tenants, while from the remainder new holdings were to be created. By 1925, 497,746 hectares had been granted to new settlers. In Latvia 1300 baronial estates consisting of 3,000,000 hectares, or almost one half of the total area, were expropriated in 1920, owners being left with 100 hectares each. From these private lands and from state land 43,000 new peasant holdings had been created up to 1922. In Lithuania large estates were to be expropriated, with only 80 hectares to be left to each owner; by 1927, 348,685 hectares had been distributed to 52,963 individuals.

In 1921 in the territory of the new Republic of Poland there were 19,454 private holdings of over 50 hectares covering a total of 10,498,100 hectares. There were only 76,436 holdings between 20 and 50 hectares. Very small holdings up to 5 hectares comprised 2,110,609 holdings, 64.7 percent of the total area. A law of 1920 decided upon the expropriation of from 5,000,000 to 6,000,000 hectares, but by the end of 1923 about 400,000 hectares had been distributed. Since then transfer has been suspended except for settlements in the White Russian provinces.

In Czechoslovakia 1730 estates absorbed 4,000,000 hectares, or 28.2 percent of the land. The reform aimed to take from the owners everything above 250 hectares, of which only 150 were to be arable. The Czechoslovakian measure is the most carefully planned and applied of all the post-war land reforms and the transfer has been gradual. About 1,000,000 hectares of arable have already been taken over by the state. In Hungary before the World War holdings up to 5 cadastral jugars (1 cadastral jugar equals 1.3 acres) formed 58.8 percent of all properties but covered only 9.04 percent of total area, while estates above 1000 jugars comprised .1 percent of all properties and covered 17.5 percent of the total area. Until 1926 some 900,000 cadastral jugars were divided among 220,000 new holders, thus increasing small properties from 44 to 50 percent of the total area. Holdings of over 100 jugars still cover, however, approximately half of the total area.

In Rumania holdings above 100 hectares covered 42.5 percent of the arable area in the old kingdom; the state has taken and distributed 6,000,000 hectares, thus reducing holdings of over 100 hectares to 7.78 percent of the land in the old kingdom and to 10.44 percent in the whole country; 630,000 peasants had received holdings up to September, 1927. Large holdings were insignificant in old Serbia. In the provinces annexed from Austria-Hungary 2,200,000 cadastral jugars were appropriated by the government up to the end of 1927, of which 837,716 hectares were arable. From it 586,025 hectares were distributed to 210,557 families. In Bosnia-Herzegovina 113,000 *kmet* families, holding 715,000 hectares, were freed. Extensive settlements were also made in Macedonia, including thus far about 11,000 families. In Bulgaria there were practically no large estates; those above 100 hectares covered less than 5 percent of the total area, about 254,000 hectares. Up to the end of 1925 some 35,000 peasant families had received 160,000 hectares, and since then the settlement of refugees has intensified this trend. Large holdings predominated in the annexed provinces of Greece, covering about one half of the arable in Macedonia, Thessaly and Epirus; 716,311 hectares have already been broken up into 125,583 family holdings, varying in size from 15.6 hectares in Macedonia to 3.02 hectares in Epirus. In addition 616,755 hectares belonging

to Turkish and Bulgarian emigrants have been distributed to 120,163 refugee families.

Land tenure in eastern Europe, as its history shows, has never been worked out by simple economic forces. The latest transformation is no doubt the greatest known experiment toward establishing something like social equality upon an individualistic basis. That basis makes the experiment strikingly different from that which is being carried out in the neighboring Soviet Republic. But how different it is also from the customary western individualism is shown by the fact that in eastern Europe the new system of land tenure excludes the two aspects most characteristic of modern individualist society: the accumulation of property and its exploitation through a capitalist technique.

DAVID MITRANY

RUSSIA. This discussion is intended to deal only with Russia proper within its national ethnic limits, including Great Russia, Siberia, Little Russia and White Russia. Land tenure in the western parts of the country, in the Baltic provinces and Poland, reproduced certain features of Germanic development; the eastern parts, inhabited to a great extent by Moslems, followed a course of their own, which, however, coincided mainly with the Russian lines.

The evolution of Russian landownership was conditioned by social differentiation and inequality, for despite an abundance of free lands the economic strength and the social power of the respective classes of the population determined the tenure of land. In the Kiev-Novgorod period (about 800 to 1300) the privileged classes were the owners of agricultural capital, which was at that time a more important factor in land tenure than the actual amount of available land, and they were also able to afford individuals the protection of their persons and property. Ownership therefore vested in the privileged classes, who exploited the land with both slave labor, which was of secondary importance, and the free labor of tenants who were not bound to the soil. The latter received loans in money and kind for their farming needs and enjoyed the protection of their masters. The leaseholds cultivated by the tenants were the possession of the joint family units characteristic of the Slavs.

The privileged landowners formed in their turn a complicated social hierarchy, from the duke and the boyars, large landowners whose sway extended over a great number of tenants both slave and free, down to the so-called *zemtzy* or *svoyezemtzy*, small proprietors who used a few slaves and occasionally free tenants and who sometimes labored on their farms themselves. Among the privileged landowners were also the bishops, the churches and the monasteries. The landowning dukes, descendants of Rurik, the legendary founder of the Russian states, enjoyed fiscal and judicial jurisdiction over the entire population with the exception of the slaves, who were considered chattels and were the absolute possessions of their owners. The other privileged landowners accordingly had no jurisdiction or right of taxation over the rural population depending upon them but were merely alodial holders, to whom immunity had not been granted.

In addition to the peasant's tenure, with the rent paid in money, kind and various forms of agricultural labor, there appeared apparently at a very early stage land tenure based upon service owed to the dukes or the large landowners. There sprang up ducal, noble and ecclesiastical benefices, whose beneficiaries were slaves and freemen obligated to perform certain services. This institution was in a way analogous to the Germanic *Dienstmannschaft* or *Ministerialität*. The service of the Russian alodial owners was voluntary and they had the absolute right to leave the service of their overlord, the duke, at will. Alongside the alod, which entailed no service, there thus appeared fiefs, created mainly by the state or by the duke.

Muscovite political development brought about the gradual subjection to the state of the originally free landownership of the privileged classes and bound to the soil the freely moving or floating peasant population, which had always tenanted other peoples' land. This process was by no means purely economic; ethnic, political and social factors were closely interwoven. The increase in the power of Moscow paralleled the decline of the Golden Horde, and Tartar and other non-Russian elements worked their way into the tissue of the Muscovite state, holding their land in return for services; their title was thus quite different from that of the Russian alodial holders. The introduction of Tartar and other non-Russian elements into the fabric of the Muscovite state was a process dictated primarily by political considerations. The subjugation of Novgorod by Ivan III, on the other hand, was not merely a violent political change but consisted in the eviction of the Novgorod privileged landowners and their resettlement in the Moscow region, while the Muscovites were set-

tled in the Novgorod district. In the case of both land was given not under the old alodial but under the new feudal type of tenure; that is, tenure contingent upon the performance of military service for the state. State feudalism was the economic foundation of the armed force of Moscow. The so-called *pomiestny* system and the dominant role which it acquired arose from the necessities of defense. The services of the gentry were secured by fiefs, which were not merely land grants but grants of estates inhabited by peasant farmers. Thus the transition from the alodial to the feudal system of ownership marked the subjection of the peasants to the privileged landowners, both alodial and feudal. Their subjugation, a natural consequence of the loan system, progressed gradually, until toward the end of the sixteenth century the peasants lost their right of free mobility. Just as gradually by way of individual grants, which by the middle of the same century became the general rule fixed in the written law, the privileged landowners secured seigniorial jurisdiction over them.

The peasants who had been transformed into serfs possessed no subjective rights and could not sue their masters. This does not imply that the Russian law offered no protection to the serfs but that that protection, which was most marked in the eighteenth century, was carried out not through the legal defense of the peasants, who were indeed outside the pale of law, but through police control over the landlords and the repression of abuse of their power.

As early as the seventeenth century and to a much greater extent in the eighteenth there was a revival of the alodial ownership of the gentry at the expense of the fiefs. While the reign of Peter the Great marked perhaps the culminating point in the process of state domination of economic life, the age of his successors was characterized by a reversal of this process in respect to the land tenure of the privileged classes. This reversal was closely related to the tendencies already obvious in the seventeenth century. In 1762 the gentry were exempted from compulsory service and some of them were transformed from mere beneficiaries of the rent paid by their peasant serfs into organizers of agricultural production based upon compulsory labor. The secularization of church land also began at this time.

The original and fundamental form of the peasants' obligations was a tax in kind—either a certain share of the crop, frequently one half, or a fixed quantity of produce; sometimes it was combined with payments in money and a corvée on the landlord's domain. At a very early stage, especially wherever the peasants were engaged in local and even more in outside trades (*otkhozhie promisli*), there developed a money tax (*obrok*) which came to predominate over the tax in kind. From the second half of the eighteenth century, with the emancipation of the gentry and their settlement upon their estates, with the expansion of home and foreign markets furthered by the increase of prices due to paper money inflation, in all the parts of the empire where it was profitable to engage in agricultural production for the market the *obrok* was displaced by the *barshchina* (corvée) system; on the other hand, wherever it was profitable to tax the peasants by using the landlords' right of unlimited taxation the *obrok* definitely prevailed. This economic division of the country continued to exist until the emancipation of the peasants and exercised a marked effect upon the actual realization of the reform.

All the farmers who held land on state and crown estates were directly subordinated to the duke; the growing external power of the Muscovite czars contributed to a constant increase of the number of these farmers. On the other hand, large inhabited portions of land were granted, especially in the sixteenth and seventeenth centuries, to monasteries and churches as well as to individual landowners; these estates thus escaped from the direct control of the czars. This process continued even into the St. Petersburg period of the empire. Like the rest of the rural population state and crown peasants were attached to the soil, but they enjoyed personal freedom. Their tenure was the nearest to freehold but did not quite coincide with it. These relatively free peasants, who constituted nearly the whole Russian population of the extreme north of the country, formed in the Novgorod period a class of leaseholders dependent upon the landowning class of boyars. In the Muscovite period they no longer depended upon the boyars but upon the czar and were intermingled with the lower strata of the Novgorod privileged landowners, the so-called *zemtzy* or *svoyezemtzy*. This accounts for the evolution of peasant proprietorship in these regions. Ownership, however, was not individual but vested in the family or household. Subsequently under the direct influence of the social equalitarian enactments of the government, which were dictated by fiscal motives, it gave way in the second half of the eighteenth century to reallotment community holdings.

The Russian land commune, characterized by its peculiar reallotment system, developed late in the history of Russian land tenure and was the result of the methods of taxation imposed by the state and by the privileged landowners and of the pressure of the growing peasant population upon a particular rural area. These factors were conditioned moreover by the absence among the Russian rural population of the institution of landownership and of the habits which it forms. The Russian mir is characterized not only by the common use of naturally indivisible portions of land, such as meadows and forests, which existed also in the Germanic mark with its *allmenden*, but especially by the quantitative reallotments of arable land based upon some conventional or real criterion reflecting ultimately the growth of rural population occupying the given area, and tending to equalize land tenure within the particular social group. In Russia the distribution of the communal lands was generally proportional either to the number of males in the family or to the number of workers of both sexes. This method of distribution differed from the so-called qualitative reallotments, the technical redistribution of arable lands scattered in strips, which does not encroach upon the rights of individual farmers to their share of the given agricultural area.

After the liberation of the gentry from compulsory service in 1762 the subjection of the peasantry lost its significance and justification from the point of view of the interests of the state and the question of the peasants' emancipation was considered. In emancipating the peasants the legislator was faced with a complicated and difficult problem. They were practically the slaves of the landlords, and all the land, which was held jointly by the landlords and the peasants, was from the point of view of the civil law owned exclusively by the former. The landlords regarded themselves as the owners, while the peasants considered the soil which they tilled for themselves as their inalienable property.

At first a course of compromise was followed: the landlords' inalienable right of ownership over the land and the peasants' inalienable right of use were together recognized as the basis of the emancipation reform. This principle, however, turned out to be merely an official fiction. According to the fundamental law of 1861 the redemption by the peasants of the land left for their use was obligatory only when the landlord demanded it. In 1881 redemption was made mandatory for both parties and as a result the land was finally divided between the landlords and the peasants; in 1881 the peasants' land was recognized as the property of the village communities. This settlement of the relationship between the landlords and the peasants did not imply the creation of individual peasant proprietorship. On the contrary, the great reform did away with prereform peasant ownership, which had evolved from the acquisitions of land by serfs from their landlords and which had been sanctioned first by custom and then by law. By the act of 1861 these holdings went into the general pool of allotments assigned to the peasants. More important, the emancipation ignored individual peasant holdings by leaving the question of property relationships between households or individual farmers to the autonomous discretion of rural communities in accordance with the precepts of customary law. An exception to this was contained in article 165 of the Redemption Statute, which enabled the peasant, by paying before the end of the term fixed for redemption the full amount which he owed, to sever his connection with the rural community even without the consent of the latter and irrespective of whether the communal reallotment principle or the consistently individual or household inheritance principle governed land tenure in his community. This rule, however, was practically abrogated in 1893 and very few peasants became individual owners of their land. During the period between emancipation and the first Russian revolution (1905–06) legislation in general encouraged communal land tenure, although in 1893 the rights of rural land communities in regard to reallotments were curtailed and redistribution was thereafter allowed to take place not more often than once in twelve years.

The evolution of Russian land distribution and tenure between 1861 and 1917 was determined by factors which proved stronger than any of the artificial measures taken to preserve large holdings during the reign of Alexander III (1881–94). In the parts of the country where agricultural production for the market did not prove profitable the landed estates left to the gentry by the act of 1861 passed with increasing rapidity into the hands of the peasants. Wherever such production did pay, the gentry retained the land and availed themselves of the growing competition of the peasants by systematically increasing the rent of leaseholds. These, which were widespread, were usually rented for one year, sometimes for three. They were leased

by individual peasants, by groups of peasants or by whole villages, in which case the rent was often paid in agricultural labor. Share tenancies and money rentals were also common and the latter tended to displace all others toward the end of the nineteenth century. Allotment lands also were frequently leased by one peasant to another. The normal trend in the distribution of land was interrupted by the revolution of 1905–06, which was preceded by agrarian unrest and which, occurring during a period of relatively rising prices for grain, marked the beginning of the government liquidation of large and medium sized estates belonging chiefly to the gentry and their division into peasant holdings. This occurred precisely in those regions where large estates were still economically profitable. A second interruption was caused by the World War: while the prices of agricultural produce rose after 1914, the great diminution in the supply of agricultural labor due to conscription favored the development of holdings whose owners were independent of hired labor, and peasant farming thus came to play a dominating role in the agricultural economics of the country.

The revolution of 1905–06 forced the government and public opinion openly to face the problem of individual peasant ownership, which the authors of the 1861 emancipation reform had endeavored to avoid. From the latter part of the eighteenth century, the age of Catherine II, native and foreign writers on Russian agricultural economics had raised the questions of the distribution of the land among the peasants and of agrarian organization. The idea of individual peasant ownership was clearly expressed in the first and very modest emancipatory measure, the law of 1803 on "free tillers." In the nineteenth century statesmen and economists differed as to whether communal tenure should be maintained or replaced by individual tenure. After 1861 the acts in general favored the land commune; after 1906, however, there was a change in policy. In that year Stolypin as head of the government enacted an emergency ukase on land reform, which became the law in 1910 and was supplemented by the Land Settlement Act of 1911. The Stolypin reform, which marked the first step toward the systematic promotion of peasant ownership in Russia and the inculcation in the peasantry of the spirit of ownership, consisted essentially in facilitating the transition from communal to hereditary tenure by individual households and in furthering in every way the development of consolidated peasant farms. Between 1907 and 1913, 13 percent of all land in communal tenure was converted into individual holdings. The break up of private, appanage and state lands for sale and lease to the peasants and the settlement of Siberia were also furthered extensively by the new land acts. During the World War the process of land settlement and enclosure was necessarily slackened. Nevertheless, the land legislation together with the operation of economic influences had made Russia before the revolution of 1917 a country in which peasant and small farm proprietorship predominated.

The great results of the reform were swept away by the agrarian revolution of 1917 and the succeeding years. This was not confined to an extralegal and forceful expropriation of the owners of large and medium sized holdings for the benefit of the peasants or to the parceling of the agricultural capital, livestock and implements that had been accumulated on the large estates but implied also the leveling of conditions within the peasantry itself and the abolition of the individual peasant proprietorships created by Stolypin. This trend, which manifested itself from the very beginning of the revolution, was given a decided impetus when the Bolshevik government in 1917 declared all land national property. More significant than this declaration, however, was the fact that many individual peasant holdings were liquidated and a great number of the more advanced peasant farms destroyed.

During the period from 1921 to 1927 it seemed for a time that the formal proclamation of the state ownership of the land would eventually prove compatible with the restoration of all the previous forms of peasant tenure ranging from communal holdings to individual homesteads. Such proved to be the case only to a limited extent, however, and very soon there set in a period of "dekulakization" and of compulsory collectivization. Dekulakization consisted in the complete expropriation and deportation of the well to do peasants, who were called kulaks. The first stage of this process went as far back as 1918, when the committees of village paupers enforced equalization of landownership among the peasants. The second stage, that of 1929–30, was connected under the so-called Five-Year Plan with the policy of forced industrialization and the collectivization of agriculture, which were to be effected as far as possible upon a wholesale scale. Farm dwellings and implements as well as land were confiscated and individuals and entire families were deported beyond the

boundaries of their village or even the villages of their region. This was done under the terms of the ordinance of 1929, which also abolished the general legislation that with certain limitations had permitted individual peasant households to lease land from others and to use hired labor. Collective farms receive from the Soviet government important privileges, especially in matters of taxation and credit; while in 1928 they had absorbed only 2 to 3 percent of all peasant holdings, because of the aggressive methods of the government and the support of the poorest peasants they had absorbed from 40 to 50 percent by May, 1930. The rate of collectivization was somewhat retarded by Stalin's order against forcible collectivization in the spring of 1930.

The collectivization of land is an essential feature of the state controlled economy which characterizes Soviet Russia. Through the collectivization of peasant land as it was carried out in 1929–30 the state controls nearly the entire agricultural production of the country. The state farms, or *sovkhozy*, established on large nationalized private estates have been of comparatively little importance. The future evolution of the Soviet system of land tenure depends upon a great number of ever changing political and economic factors both within and without the country.

PETER STRUVE

INDIA. With its variety of physical features and agricultural conditions, its long checkered history of conquest and assimilation of various races and peoples, India presents a great complexity of land tenures. The problem of the ownership of land in the Hindu period is still unsettled. According to one group of scholars, including B. H. Baden-Powell, ownership was vested in the king while the peasants were merely rent paying tenants. Others hold that the cultivators were the proprietors and that the king's right was limited to taxation. W. H. Moreland suggests rather pertinently that ownership in the modern sense probably did not exist at all and that the question is rather whether or not the peasant's right of occupancy was held subject to the king's pleasure. The whole question is somewhat academic, for the landholders certainly had some vested interest in the soil they cultivated and a share of the produce, whether it be called rent, tax or tribute, went to the king.

The lands of related joint families were organized into village units. Landholding was individual in that the families had proprietary rights to separate plots of arable land. In addition there were common grazing fields and common woodlands. Originally the village communities were composed of descendants of a real or traditional common parentage. In some villages strangers were gradually admitted as permanent tenants, and when the competition for land became stronger temporary tenancies arose. Social stratification appeared, based on length of tenure and bearing some analogy to the superiority of ownership of land. Lands held by permanent tenants, like those of the original landholders, could be inherited, mortgaged and sold. In the case of mortgage and sale they had to be offered to the inhabitants of the village. The permanent tenants paid a customary rent and unless they defaulted could not be ousted. Temporary tenants paid a contractual rent and were either tenants at will or from year to year. If they lasted longer than a generation, temporary tenancies were convertible into permanent ones.

As early as the Vedic period the village community established itself and the king claimed his *bali*, or tribute, from the peasants collectively. Collective assessment from the entire village was the method which prevailed in India throughout the later periods of Hindu history, one sixth of the gross produce being the standard revenue. The revenue was collected in kind, at first through the headman of each village, who apportioned it among the cultivators and was permitted to keep a portion for himself. As the states grew larger, various intermediate officials between the headmen and the crown were appointed to collect the taxes and in payment they were allowed the revenue from part of the land. Revenues were also assigned to temples, to chiefs for conquests or for submitting to the superior rajahs and to public servants as rewards. In certain cases grants of contracts for revenue farming were made to individuals. All these rights tended to become hereditary and the class of persons who enjoyed them became an aristocracy which, whenever the central government became weak, transformed their right to the revenue into a right in the land itself. In the meantime they depressed the position of the cultivators into a kind of tenancy. This overlord class which developed became known as zamindars.

The Moslem conquest theoretically changed the nature of tenure, because according to Moslem law the conqueror was the owner of the soil. From a practical point of view the Hindu and Moslem systems of taxation were so similar that

the newcomers adopted with certain modifications the existing tenures and tax systems. The government's share of the produce was increased to between one third and one half. Collections were regularized and cash payment by headmen or tax farmers became the ordinary rule. In certain reserved areas taxes were collected directly from the peasants. By the middle of the seventeenth century zamindars, assignees and farmers of land taxes had greatly strengthened their position. They collected the great bulk of the revenue and took as much as the cultivator could afford to give. The assignment and contracts were usually for short terms, but with the collapse of Mogul administration the position became hereditary in many cases.

When the East India Company obtained possession of Bengal, Bihar and Orissa they found it difficult to allocate the different rights in the land. They utilized the older assignees and zamindars and also in some instances deprived these groups of their rights by auctioning off the revenue for collection. Because of a variety of circumstances the system proved a failure, and in 1793 a permanent settlement was introduced by Lord Cornwallis. While the British regarded it as impolitic to contest the rights of hereditary rajahs and nawabs who existed in Bengal at the time, there was also a confusion between Bengal zamindars and English landlords. Accordingly the zamindars were recognized as practically the owners of the land and were made responsible for a cash revenue fixed in perpetuity, with the result that the immemorial rights of the *khud-kasht* ryots to a customary rent and permanent tenure were almost completely effaced. Some provision was made for the protection of the older tenantry, but enforcement was difficult because the settlement was made only with the zamindars. The amount of revenue due from the latter was high; there were many defaults, the estates were sold to speculators and the peasants suffered from oppressive exactions. Subsequent laws passed to aid the zamindars in the collection of taxes abrogated even further the rights of tenants, and within fifty years a complete change took place in the ownership and in the other interests in estates.

In many respects the series of land laws enacted in Bengal since 1859 has given legal force to the old customary rights of cultivators, which the permanent settlement had left unascertained or actually obscured but with this difference: the Bengal Tenancy Act of 1885 aimed at securing a fair rather than a customary rent. The zamindar system was afterwards extended to the Benares division of the northwestern provinces of Agra and Oudh. One sequel to the permanent settlement in Bengal has been the subdivision and subinfeudation of rights in land. The zamindars leased out their interests and the lessees did likewise, so that there was created a long chain of rent receivers and rent payers known as patnidars, dar-patni-dars and se-patni-dars, who intervene between the state and the actual cultivator. Proprietary rights in eastern Bengal are often seven and eight deep; each of these strata of proprietorships is divided up horizontally among a number of sharers. This has resulted in the levying of numerous abwabs (special additional assessments) and other illegal assessments.

A variant of the zamindar system was established at a later period in the central provinces, where under the Mahratta rule the revenues of the villages have been farmed out to individuals called malguzars or patels. These malguzars were converted into proprietors by the British, although not in the same sense as in Bengal. Since each cultivator claimed the exclusive ownership of his plot, the settlement had to determine how much the cultivators were to pay the malguzars as well as the amount due from the latter. The malguzari settlement is liable to periodical revision. Similarly in Oudh smaller chiefs, revenue farmers and jaghirdars were transformed into proprietors and obtained special promises and privileges from the British after the mutiny of 1857. Munro when governor of Madras found that in the greater part of the Madras territories the village headman was still the collector and rentier of the village. The village communities which still remained complete entities were ignored and engagements were entered into with individual ryots, who thus hold their lands directly from the government. Munro based the Madras system on an error and the error spread to Bombay. It is well known that the early assessments in Madras, Bombay and most other provinces were too heavy and caused agricultural distress. At each periodical settlement the officials tended to find that the government was entitled to a larger share of the produce. The "ryotwari system" was later established in Berar and with some modifications in Assam and Burma.

In the Punjab and the United Provinces the village communities were founded mostly by agricultural tribes, clans and castes, who formed compact brotherhoods called bhaiyachara. The Rajputs and other military, aristocratic or at any

rate non-cultivating classes, however, regarded themselves as superior to the rest of the agrarian population and through conquest, usurpation or grant created landlord villages. These bore down upon the rights of the earlier joint communities, who once enjoyed lordships of the villages and are now generally reduced in their turn to inferior proprietors. Common lands and grazing grounds, collective irrigation and economic management in all types of village communities have survived the vicissitudes of history. Although at the beginning attempts were made to settle the villages on a permanent basis with revenue farmers or other persons of note, the important British settlement was made with the community as a group, the village being responsible for the payment of the revenue. But even in these mahalwari settlements there is a tendency of the British revenue officers to maintain the collective responsibility only nominally. They have advanced toward individual assessments and in practise have treated the coproprietors as individual proprietors.

The supersession of the ancient rights of the village communities by the creation of rent collecting landlords or by state landlordism has not been favorable to the peasantry and to village life as a whole. In Bengal, Bihar, the United Provinces and the Central Provinces there is to be found the same story of mistake and subsequent rectification in which full proprietorship was first given to zamindars and malguzars with the suppression of the rights of the village communities, while later on occupancy status was established to a more or less complete degree and the inferior tenants were protected from arbitrary treatment. A series of tenancy laws, however, cannot check all the abuses of the irresponsible and absentee landlordism which has been created by the British government. The landlords have encroached upon and restricted rights in the village commons, neglected their duties toward irrigation, levied illegal cesses and displayed little practical interest in the improvement of the condition of the tenants. Thus the relations between the landlords and tenants today are on the whole unsatisfactory, and they become severely strained whenever the inferior landlords treat the ownership of land simply as a financial investment by employing a long series of middlemen who widen the cleavage between the actual proprietors and the actual tillers of the soil. Nor is the increase of middlemen confined to the permanently and temporarily settled tracts. About 52 percent of the lands in British India is held under the ryotwari system, and in 48 percent there is an intermediary between the cultivator and the state. Even in the ryotwari tracts there has been a large increase in tenancy. It is estimated that in Madras and Bombay because of the prevalence of subletting over 30 percent of the lands are not cultivated by the tenants themselves. In the Punjab alone the number of rent receivers has recently increased from 6,026,000 to 10,008,000. These conditions have lowered the economic status of the actual tiller of the soil.

The excessive cutting up and scattering of holdings, the conflict between the richer and the landless peasantry and between the cultivating and money lending classes are all recent evils which have been aggravated by the British misunderstanding of the Indian village tenures. Holdings are extremely small and scattered in ridiculously small plots. In one village investigated in the Deccan the average sized holding decreased from 40 acres in 1771 to 7 acres in 1915, at which time 60 percent of the holdings were less than 5 acres. The small size of the holdings is due both to the pressure of population and to the laws of inheritance. Attempts have been made to cope with this excessive subdivision by the formation of cooperative societies in which the holdings are consolidated. The increase of the landless classes from decade to decade, the transfer of land to money lenders and the multiplication of a class of intermediaries who profit from the complexities of the present land system are symptoms of an inequitable system of distribution. Rents are very high; the landlord in most provinces has become a rent receiver rather than a wealth producer and contributes a relatively small portion of his surplus toward the upkeep of the state, while the cultivator of the uneconomic holding, a class which includes the majority of the agricultural population in many provinces, is often left with a pitifully inadequate surplus after the payment of his rent or revenue and interest. The systems of tenure have created an Indian agrarian problem which today has its social and political repercussions and which has led the peasantry to enter with enthusiasm into the "no rent" program of the passive resistance movement.

RADHA KAMAL MUKERJEE

CHINA AND JAPAN. The oldest source of information concerning land tenure in China is the *Yukung*, the tax register which dates from the reign of Emperor Yu, who founded the Hsia

dynasty about 2200 B.C. Although the records are somewhat obscure, it appears that during the Hsia period all land belonged to the state. At the age of twenty every man was given a plot which he retained until his sixtieth year, when it reverted to the state. The tax rate was one tenth of the total yield of the land but the produce in which it was payable varied in different localities; taxpayers nearer the capital paid in bulkier produce than those whose location made transportation difficult. This was known as the *kung* system. The cultivators of the central province, Chi Chow, paid their tribute directly to the emperor. In the other provinces the feudal princes acted as intermediaries, presumably sharing the taxes with the ruler.

Such an uncertain system of state revenues proved impracticable when as the result of the increasing intercourse of the Chinese with the peoples of the south and west a more complicated system of government replaced the old tribal court. A new revenue system implied a new system of land tenure and before 1700 B.C., when the Hsia dynasty gave way to the Shang dynasty, tsin tien (*ching t'ien fa*) tenure was officially adopted. All the arable land was divided into allotments of 630 *mou*. One *mou* was equal to 100 *pu* and 1 *pu* was 6 *ch'ih* square; the *ch'ih* was slightly longer than the modern standard, which is approximately 14 inches. The areas of 630 *mou* were subdivided into nine square parts. A central square was reserved for the emperor while the remaining eight parts were distributed to eight households, which cultivated their own private land but cooperated in tilling the emperor's plot, the total yield of which went to the court. Part of the emperor's plot was used for the dwellings of the eight households; thus only 56 *mou* remained to be cultivated for the court. No family, whatever its rank, was entitled to more than one ninth of 630 *mou*.

About 1100 B.C. the Chous rising in the province of Shensi conquered Shang and unified China. In the land near the capital and other administrative centers the old *kung* system was restored, but the common tenure for the country remained the tsin tien, which the new dynasty revised and perfected. Under the Chous the irrigation system was worked out in great detail. Moats of three different widths were constructed on the basis of the tsin tien formation. They gave the cultivated area the orderly appearance of a chessboard and through them water was drawn upstream from the rivers. By this system the cultivated fields of the period were limited to level lands: thus while the empire possessed an immense amount of territory equal to about one third of modern China, the total cultivated area was given as only 10,000,000 *ching*, 1 *ching* equaling 900 *mou*. The tien now comprised 900 *mou* (about 1800 square feet) or 9 squares of 100 *mou* each. The land was classified according to fertility, and distribution was made on the basis of that classification as well as upon the strict rule of the tsin tien system. Lands which never had to lie fallow were classified as good, those which lay fallow every other year were medium and those which were cultivable only every third year were poor. A household of seven or more was assigned to good land, while one of fewer than five members had to be satisfied with the less fertile areas. A family which increased in size between distributions was given better land under the new allotment. Another method of distribution was to give a family 100 *mou* of the best land, 200 of the medium or 300 of the poor. Where prairie lands were used each family was given an additional tract of prairie, the size of which varied with the quality of the arable allotted to the family. Land was distributed to the peasants yearly. These rules applied to distribution not only among the agricultural class but also among the commercial and artisan classes, which had developed in the Chou period; although a peasant received five times as much land as an artisan or merchant. This rule too was not strictly followed because of variations in the fertility of the land. The emperor's share and other taxes were collected through the feudal lords. No one enjoyed private property in the land and the farmer was practically a tenant with a vested interest.

The tsin tien system did not accord permanent satisfaction. The policy of peace fostered by the Chous led to an era of prosperity which accentuated the rapid increase of population. A shortage of arable land resulted and it became necessary to exploit new lands. Forests were felled and moats and ditches constructed for irrigation. Despite these measures, however, allotments had to be limited to about 70 *mou* and few were able to derive a sufficient livelihood above the tax payments. Poor farmers deserted their lands or transferred their rights in them to the more fortunate.

Meanwhile the sovereignty of the Chous was threatened by the Ch'in kingdom, an extensive territory with a relatively small population in the province of Shensi. The minister of the state of Ch'in, Shang Yang (d. 338 B.C.), determined to

develop the kingdom and introduced an improved system of irrigation, which increased the productivity of the soil. Concluding that the tsin tien system was unwise, partly because of the immense waste involved in the boundary marks and roads, he abolished it about 350 B.C. and permitted each family to have as much land as it could cultivate. The taxation system based on the tsin tien was thus eliminated and taxes were made proportional to the size of the area cultivated by each family. Private ownership and free trade were also permitted. Attracted by these new measures the neighboring peoples flocked into the Ch'in country, where they were permitted to exploit the land. The condition of agriculture was greatly improved and the country flourished. The nation became so powerful that in the reign of Shih Huang-ti (d. 209 B.C.) the surrounding states were conquered and all China was unified. The new dynasty abolished the tsin tien system everywhere and did away with feudalism. Taxes were now paid directly to the central government and became so burdensome that small cultivators gradually sold out to the rich merchants and traders.

The Ch'in empire was conquered by the Han dynasty in 206 B.C. fourteen years after the unification of China. The total arable area at this time is estimated at 32,290,900 *ching*, of which 8,270,500 were actually under cultivation. Despite the lowering of taxes the latifundia did not decline and most of the cultivators were tenants who paid a large percentage of their produce in rent. Theorists considered a return to the tsin tien system the only escape from this situation, and when Wang Mang usurped the Han throne in 9 A.D. he issued an edict nationalizing the lands. The maximum area, cultivated by a family of eight or fewer male members, was not to exceed 900 *mou*. Lands in excess of this amount were to be distributed to relatives or to neighboring farmers. After the distribution no land was to be bought or sold. This attempt met with violent opposition, primarily from the wealthy landowners; and private ownership and free trade in land were soon restored. The supply of arable land did not keep pace with the increase in population. The pressure on the land became more severe; and while the peasants were landless, the latifundia and the power of their owners increased.

During the Han and Wu dynasties several emperors and statesmen vainly attempted to reestablish the tsin tien system or some modification of it. The northern Wus were most successful; they profited by the fact that the wars had led to such a marked decline in population and to such a wholesale desertion of their territory that it was not necessary to expropriate the large landowners in order to effect a distribution.

In the reign of Kao Tsu of the T'ang dynasty there was issued in 624 a new law instituting the tsu yung tiao system, which established several types of tenure. Of the *k'ou fen t'ien*, land given for a limited time, 80 *mou* were to be granted to all males above eighteen years except the crippled and the sick, who were to be entitled to only 20 *mou*; widows were to be given 10 *mou*. If a community did not possess sufficient land for such a distribution, the surplus from neighboring districts was utilized. In the distribution, which was to be made every year during the month of October, the poor and those who had served the state were to be given priority. But the standards set forth in the law could not be strictly enforced in practise. The size of the allotments was made to differ according to the condition and amount of land in each community. In some places distribution took place according to the letter of the law; in others allotments were decreased by half and in a few no distribution was made. In sparsely settled areas the merchants and artisans received half as much as the farmers; in crowded areas they received nothing. The land returned to the state upon the death of the holder. Of the *yung yeh t'ien* lands, permanent grants held in hereditary tenure, 20 *mou* were allowed to every person of age, the head of the family being given a similar additional amount. A certain percentage of this land was to be reserved for the planting of the mulberry, the elm, the plum or any other useful tree. Official and royal families received larger amounts varying with their rank and there were certain special tenures for officials and soldiers. Those who migrated from their districts could sell their *k'ou fen t'ien* and *yung yeh t'ien* lands but could not receive further distribution.

Persons who received the *k'ou fen t'ien* and the *yung yeh t'ien* had to pay ten bushels of millet or rice to the state as land tax. An additional tax, which differed in kind according to the produce of the respective lands, and a labor tax of twenty days per year, which was commuted at the rate of three feet of silk per day, were also established. These taxes were all uniform in amount, for it was assumed that there was actual equality in landholding.

After about sixty or seventy years the govern-

ment was unable to enforce its land laws. In a system in which public and private ownership existed side by side, private ownership naturally prevailed when the government had no more land to distribute. The sale of land was permitted and latifundia again rose to the fore. Taxation grew exceedingly burdensome and to relieve it the principle of proportional taxation on land was introduced. The Sung dynasty, which after a short interval succeeded the T'ang dynasty, and other later dynasties made many attempts to enforce equitable distribution, but such grave disturbances resulted that the measures had to be abandoned.

Under the Manchus the land system was further complicated by the military and semimilitary tenures. Lands were granted in military tenure to Manchus in return for military service in times of emergency, thus insuring a strong force in case of an uprising of the conquered people. Sales or transfers to the Chinese were forbidden. These lands, usually in large allotments, were located mainly in Chihli and Manchuria and were exempt from taxation and rent. The semimilitary grants were made to soldiers from land located at strategic points. The tax rate was unusually low, the term of tenure limited and the land inalienable. All other private lands were held in common tenure, which amounted practically to complete ownership; the owners were bound to pay a land tax, a labor tax and a fee on alienation. In addition there were the public lands, held by the government for its own use or for the maintenance of public institutions. Gradually the Manchus alienated their military lands, and these together with the soldiers' holdings became common tenures, which are the predominant form of holding in China today.

These holdings are generally small because of the subdivision caused by the pressure of population and by the law of inheritance, by which all sons share in the land. Where the holding is exceptionally small it is frequently left undivided, the members of the family owning it in common. Independent cultivators often rent additional land in order to eke out a living. The scattered field arrangement is prevalent. While complete statistical information is unavailable, according to recent surveys the most common holding in the north is 4 acres, 65 percent of the holdings being between $\frac{1}{2}$ and $4\frac{1}{4}$ acres. In the wet rice lands of the south smaller farms are general.

Tenancy is common; the *China Year Book* for 1929–30 from a study of fifty farms on the Chinstu plain by H. D. Brown and Li Min-Liang estimates that 44 percent of the land is owned by cultivators, 46 percent rented and 10 percent partly owned, partly rented. Buck on the basis of a wider survey concludes that owners' farms comprise from 50 to 60 percent of all farms in China and that part owners' and part tenants' farms constitute from 20 to 25 percent. In the north over 75 percent of the farmers are owners; in east central China less than 50 percent.

The conditions of tenancy vary. One system employed is that of share cropping, in which the landlord supplies the capital and shares with the tenant, usually on a fifty-fifty basis. Share renting is also common; the tenant supplies capital and labor and pays as rent usually from a half to two thirds of the produce. Under the cash crop system the rent is a fixed sum. Rents are paid in money, in kind or in both; the percentage of total receipts which go to the landlord varies from 24.6 to 66.6. There are both short and long term leases. Where the tenant has paid a portion of the purchase price for a permanent right of cultivation he cannot be removed while he pays his rent. Leases of government lands are perpetual and the rent averages about one tenth of the produce. In order to ease the land situation the Kuomintang has formulated a program calling for the equalization of landholdings and for the reclamation of the large uncultivated tracts of land. Several plans for taxing unearned increments have been formulated but as yet only minor reforms in land taxation have been instituted.

Authentic Japanese history is said to begin about 660 B.C. Agriculture was then primarily the raising of rice planted in paddy fields. In May prior to the planting the elders of the community led the tribe to the fields and divided the land into sections, which were assigned to the various households. The allotment merely signified the sections from which the respective households were to obtain crops after the harvest. Until about the time of the Taiho Statutes common cultivation was general. It may be inferred nevertheless that an elementary sense of private ownership in the allotted areas existed, since anyone who sowed upon land where seeds had already been planted by another was guilty of the offense of *shigemaki* (double sowing) and was liable to punishment by the gods. When the soil became exhausted the tribe moved on to new lands. By the fourth century B.C. cultivation extended to the flatlands in southern Kyushu,

the Sanin districts in northwest Japan and the area around the present cities of Osaka and Kyoto in central Japan, especially near the banks of rivers where drainage and irrigation were easy.

The tribes in that period were consanguineous groups of which the patriarch was also the chief. He led in the observance of religious ceremonies, was responsible for order in the community and it was through him that orders were received from the gods. As the tribe grew in size and as the factor of blood relationship became less significant, the chief came to be regarded as the proprietor of the community lands.

As the tribes settled down to cultivate their territories permanently, the area of arable land became too small for the increasing population. It became apparent that new lands must be reclaimed, and in order to accomplish this task the elders brought pressure to bear upon the tribe. Because of the growing complexity of the community, penal regulations were drawn up and enforced by the chief. Criminals and prisoners of war were pressed into slavery and set to work at reclamation, while the reclaimed land became the property of the chief. The position of the patriarch became further differentiated from that of the tribesman and he gradually became a lord over his kinsmen, who became his retainers or tenants. In time the lords were subdued and their possessions annexed by the Yamato court.

About 600 A.D. the emperor dispatched scholars to China to study the laws and institutions of the T'ang regime. These scholars were particularly impressed by the limitations on the sizes of allotments of land as compared with the free growth of the latifundia in their native country and upon their return instigated the law of Taikwa which was promulgated in 645 and contained one of the outstanding land statutes in Japanese history. By the law of Taikwa the land system of the T'ang dynasty was virtually adopted. The princes of the blood and the lords of the provinces were prohibited from owning large tracts of land and from subjecting the people to slavish labor. All land was nationalized; a limit was set to landholdings and those who engaged in cultivation had to pay a land tax directly to the court and not to the provincial lords. The law was intended to insure an income for the government and its officials and also to curtail the authority of the local grandees. It was originally put into effect only in the districts under the direct jurisdiction of the imperial court, being applied only to those districts which were less than ten days' journey from the capital; later the imperial court gradually extended the jurisdiction of the law.

After fifty-six years a revised and perfected law known as the Taiho Statutes was issued, which realized fully the principles enunciated in the Taikwa reform. The Taiho Statutes prescribed in detail the regulation of land tenure. All land was pronounced the property of the imperial court and was divided into public and private lands. The public lands consisted of the imperial lands, some of which were cultivated by compulsory labor while others were let to the peasants for cultivation subject to the payment of rents. In addition there were grants to the shrines (*shinden*, shrine land) and to the temples (*jiden*, temple land) to aid in their upkeep. Schools, women oracles, orphans and the aged were given lands to afford them maintenance. The private lands were distributed to the people; those which went to the peasants were called *kubunden* and resembled the *k'ou fen t'ien* of the T'ang system.

The courtiers received land known as *iden* (rank land); government officials in service obtained *shokuden* (service land); those who rendered unusual service to the court were granted *shiden* (merit land). These four kinds of private land were granted subject to the payment of taxes to the emperor, the last three being more or less hereditary possessions.

Land was distributed to the peasants in the following manner: every male was entitled to 2 *tan* of rice fields (about half an acre) and every female to two thirds of that amount; those under five years of age received no portion. Slaves belonging to the imperial court were granted *kubunden* equal to those of freemen. Slaves in the homes of the commoners were granted one third of the freemen's allotment, while temple slaves had no share whatever. The slaves' *kubunden* were exempt from taxation. The right to *kubunden* applied only to the person to whom it was distributed and reverted to the state at his death. Peasants who received *kubunden* received also a piece of garden land (*yenchi*) varying in size according to the community; garden land could be bought and sold and its ownership was recognized as absolute. Three grades of garden land were distributed: the first grade had to be planted to 300 mulberry and 100 lacquer trees; the second, to 200 mulberry and 70 lacquer trees; and the third, to 100 mulberry and 40 lacquer trees.

As in the Chinese system each recipient of the *kubunden* was subject to three taxes, *so* (land

tax), *cho* (tribute) and *yo* (labor tax). The land tax was approximately 4.4 percent of the gross yield. The *cho* was restricted to males organized into units according to age and was payable in silks, yarns or other products of the land. Besides the *cho* there was a surtax limited to adult males and also payable in produce. The *yo* (forced labor) was the obligation of able bodied men to give to the state ten days' service per year or twenty-six feet of cloth or its equivalent in other products and also to give an additional thirty days' service per year upon demand. Those who had fulfilled the thirty-day period of service were exempt from the payment of both land and tributary taxes. Substitutes might be sent to serve the *yo*. Still another burden upon the farmers, the *zatsueki*, consisting of sundry labor service, was imposed by the provincial governors, who utilized it for the cultivation of public lands. Under this tax the peasants were liable to sixty days' service per year in their districts. Peasants residing within forty-five miles of the imperial court were exempt. In the course of time there were ameliorations in the amount of land and tributary taxes, but they did not to any extent improve the position of the oppressed agricultural classes.

The Taiho Statutes provided that land which had accrued to the state be redistributed every six years so as to provide for the people who had not shared in the previous division. This rule was strictly observed for about twenty years, after which it was allowed to lapse. In certain districts the redistribution was made after thirty years, in others no redistribution was made at all, and after approximately eighty years the Taikwa and Taiho Statutes became dead letters. This laxity permitted increased trading in land and because taxation was so oppressive many sold their holdings, thus giving rise once more to latifundia.

The Taikwa and Taiho reforms had made generous provision for shrines and temples. Such lands were exempted from taxation, and the priests and monks who controlled them levied only a nominal land tax upon their peasants, who were thus free from tributary and labor taxes. Many people granted their lands to temples in order to make them tax free and then received them back in fief. The shrines and temples were not subjected to interference by the governors, and courtiers who accumulated vast tracts of land sought to make them independent in the same way. The imperial court was petitioned for charters, which were easily obtainable in most cases because of the corruption in the government. Those who were unsuccessful set up their possessions as de facto manors, refusing to pay taxes either to the court or to the local officials. This made it possible for the manorial lords to offer land to peasants on better conditions than those of the state, or *kubunden*, tenures. The peasants or the manors (*soen*) were subject only to a moderate land tax and accordingly the farmers flocked to them, deserting their own lands. Another factor in the rise of the manor was the voluntary amalgamation of the lands of local farmers and landholders into a manorial unit. Gradually more than half the good lands were absorbed by the manors. The public lands under the jurisdiction of the government were decreased and eventually deserted, and state revenues consequently fell off markedly. The manors vied with each other to increase their territories, until finally they absorbed all the land. Certain lords managed to extend their sway over a great number of manors and a feudal system began to develop. The manor became an economic as well as an agricultural unit and slavery disappeared.

The lot of the farmers under the feudal system was not a happy one, although they were better off than under the Taikwa and Taiho Statutes. Their land was taxed by the lords and they were reduced to serf status. They had the right to cultivate the soil but could not buy or sell it, although toward the end of the feudal period this right was sold. Taxes, which varied with the fief, were based on the custom of the country and bore no resemblance to the complex Chinese system. Besides the land tax there were the *yo* and *cho*, but these were occasional rather than regular and never constituted a real burden. In some places the lord demanded 50 percent of the yield, in others 70 and in still others 80.

Hideyoshi, who unified Japan under his shogunate, in 1590 enforced a uniform ratio of two thirds of the produce but this did not ease the farmers' lot to any appreciable extent. Iéyasu Tokugawa changed the ratio to a half, but he was never able to exact it and the actual levy was about a third. During the Tokugawa period a great deal was done to improve the lot of the peasantry.

With the restoration in 1868 feudalism was abolished and the farmers obtained absolute ownership of their holdings thus maintaining preexisting inequalities in holdings. The right to trade freely in land led to a period of speculation

which coupled with the growth of industrialization led many small landowners to dispose of their lands and gave rise to some larger holdings, although aside from the imperial property there are really no very large landed estates in Japan. In 1924, 2,478,560 landowners owned plots which were less than 5 *tan* (slightly over an acre); 888,623 landowners owned holdings of more than 2½ and less than 7½ acres; 49,695 owned more than 7½ and less than 125 acres; whereas only 4293 owned holdings of more than 125 acres. The great increase in population in addition to other factors led to the spread of tenancy and, by 1903, 44.5 percent of the arable land was worked by tenant cultivators. In 1929, 46 percent of the land was cultivated under lease. Thus in the last twenty-five years, while the growth of tenancy has been insignificant, there has been a marked tendency for small cultivators to rent land in addition to their own holdings because of the difficulty of earning a livelihood. This latter group comprises two thirds of the 58 percent of the population who are farm tenants. The government has tried several schemes for converting tenants into proprietors, but they have not as yet been successful; 99 percent of the tenants have less than 12-acre holdings and the usual allotment is from 2 to 5 acres. From 50 to 60 percent of the crop is collected as rent, which is usually fixed before the crops are gathered. Except in rare cases the contract is not one of crop sharing, although when there are bad harvests reductions in rent are often allowed. The high rents are due in part to the extremely high tax rate, about 11 percent of the value. This rate has been necessitated by the rapid industrialization of Japan, the cost of which has fallen on the land. The tenant farmers, still influenced by feudal tradition, believe that they have a vested right in their land and frequently sell that right. Recently, however, any interest of the tenant beyond his contractual rights has been denied by the courts. The low rate of return from land both for landowners and tenants has led to a popular movement for land nationalization.

YOSABURO TAKEKOSHI

LATIN AMERICA. There are two major types of land tenure in Latin America, the individual and the collective. The two represent different degrees of cultural advancement, different economic principles, theories of government and social tendencies and in the main different racial groups. Many of the social, economic and political problems of Spanish and Portuguese America from the days of the conquest have centered around the lack of harmony between the two types.

The most characteristic form is the large rural estate, for which the generic term hacienda is used, although it is variously styled *estancia* (in Argentina), *fazenda* (in Brazil), *finca* (in Bolivia and Peru) and *fundo* (in Chile, where hacienda is used only for the very largest of the estates). The hacienda is not cultivated by the owner himself, who is often an absentee, but by laborers attached to the farm by long term written contracts or by a mutual understanding and firmly established custom, which may have even greater force. In some countries it is cultivated by tenants.

The system of large individual holdings reflects the organization of society in Spain and Portugal at the time when their institutions were transplanted to America. Large estates with serfs or peasants attached constituted the principal form in which land was held, a system which fitted well into the scheme by which the Spaniards and Portuguese established their hold in the New World. Those who distinguished themselves in the conquest were given extensive grants of territory, frequently with the services of native workers, which became the basis of the large holdings characteristic of Latin America today (*see* LAND GRANTS, section on LATIN AMERICA). The social and political conditions which this system of land distribution helped to create furthered the spread of the system of large holdings, the maintenance and perpetuation of which have also been aided by various geographic and economic factors. In many regions there are areas of light rainfall and scanty vegetation which are able to support only cattle ranches or, if cultivable, require the construction of large irrigation works; here extensive areas and economic resources are required. The tropics, where the white man is usually not inclined to engage in manual labor, have not favored the introduction of a system of small proprietors working on their own land, and the growing demand for tropical products in the world's markets has aided the development of large plantations. In the fertile areas of Argentina and Uruguay, where the development of great cattle ranches was aided initially by a scarcity of labor, the development of a similar world market for pastoral products has helped to perpetuate the system of *estancias*. The exploitation of petroleum deposits has also aided land aggregation; so

too have rising land values. Unearned increments in land have been rapid not only in countries like Mexico or Chile, where the amount of arable land is rather limited, but also in countries like Argentina, where the amount of land available for settlement has not been so limited by geographic causes.

A second type of individual holding is the small rural property, variously styled *chacra*, *rancho*, *huerta*, *hijuela* or *sitio*. Such holdings are far less conspicuous than the haciendas. They are very numerous, however, although their aggregate area is relatively small; most are little more than miniature farms. These also for the most part originated in grants of land in early colonial times, bestowed upon the lower orders of the conquering armies or upon civilians of humble rank. Some are more recently created homesteads conferred upon or sold to colonists who settled in frontier regions or are derived from squatters' holdings on public lands. Still others are parcels of larger properties which have been frequently subdivided through the centuries, a process aided to some degree by measures of agrarian reform. The small property has frequently been subjected to the encroachments of the more powerful hacienda, however, and has therefore tended to exist only under such geographic conditions as have not favored the existence of the latter. In Mexico before the agrarian reforms *ranchos* existed as a rule only where cultivation depended upon rainfall alone, where the supply of water sufficed to irrigate only a few small fields or where tillable land existed in small isolated areas. They were generally not to be found on the land lying along the principal roads and railroads or in the vicinity of the larger towns; this had been taken up by the haciendas.

Except for a somewhat stronger right of eminent domain, a consequence of the fact that in colonial times the crown retained a share of its rights over the royal patrimony which it distributed, and except that titles generally include only surface rights in accordance with the principles of law prevalent in the Iberian Peninsula, neither of the foregoing types of holding is greatly different from the alodial holding common elsewhere in the modern world. In sharp contrast to them is the collective holding. It belongs to a group of persons all of whom are bound together by ties of kinship or by common rights acquired after long established residence in a particular community. Each member of the group enjoys the privilege of sharing with his fellows the land and other natural resources of the holding, including pasture, game, wood, water and rock, and of being allotted a small piece of tillable land which may be held indefinitely and even passed from one generation to another or may be periodically reassigned to different members of the community. The land is thought of as belonging to all, much as the air or sunlight, and cannot be alienated. It is in no sense an individual possession; the holder has merely the usufruct and his right is limited to a specific term or at most to the time during which he makes use of it.

This scheme of land tenure was common among the Indians of North and South America, few of whom existed under a system of alodial holdings. Even the most highly civilized, such as the Incas, Mayas and Aztecs, held their land in collective fashion; such community lands are still common in Mexico and also in the Andean republics, where the village holdings characteristic of the Inca Empire but apparently long antedating that dynasty still survive among the *ayllus*, or clans, of the Quechua and Aymara Indians. Forms somewhat similar to these clan holdings existed in the Araucanian country of southern Chile and in Paraguay, where they formed the foundation upon which the Jesuit empire in that country was built.

As it survives in a number of the countries today the system of community holdings represents a conspicuous contribution of the Indians to social organization, but the European invaders also contributed in some degree to the maintenance of the system. Collective landholding had existed in the Iberian Peninsula before Roman times and survived, particularly with respect to pastoral and timber land, at the time of the conquest. Such land together with other types was held by towns for the common use of the inhabitants, and numerous towns with such holdings were created in the New World. Many have retained something of their communal character, particularly where the white population has merged with the aborigines.

The collective form of tenure has tended to disappear, however, because of both the growing individualism in the modern world and the encroachment of the neighboring hacienda. In most of the countries, notably in Mexico, Ecuador, Peru, Bolivia and Chile, legislation has been enacted to abolish it and to divide the holdings among the individuals who had rights in the communities. Bolivar decreed the individualization of community lands in Peru on April 8,

1824, and his decree was followed by numerous other measures, some as late as 1893, to make it effective. A wave of such legislation during the middle of the nineteenth century left its mark in Mexico and Bolivia (*see* AGRARIAN MOVEMENTS, section on LATIN AMERICA) and in Chile with regard to Araucanian Indian land (1866). But so foreign to the aboriginal mind is the concept of individual property in land that legislation has had little effect except to expose the Indian farmers to further exploitation on the part of the whites, and in most of the countries the communal system still exists. In Mexico a recognition of this situation has led to the restoration of common holdings, at least temporarily, until the Indian population can be prepared for individual ownership. Even more generally than in the case of the small individual holdings the geographic and economic conditions which have helped to preserve the communal system are those which have been unfavorable to the spread of the hacienda. Communal ownership is found chiefly in out of the way corners, in areas of low fertility which are difficult to irrigate or in tiny pockets of land in mountainous regions. In Bolivia the Indians were left to the highlands as the Spaniards confined themselves to regions where they and their European plants and animals could withstand the cold. In several of the countries where the community system was deeply rooted even the incorporation of the Indians and their lands into a hacienda did not destroy it, and there exists, especially in Bolivia and Peru, the anomaly of a dual tenure—that of the hacienda owner as overlord and the subordinate tenure of the agrarian village or villages within its bounds. While each system jealously maintains its rights, it accords a degree of respect to the claims of the other; the hacienda may even change hands without affecting the status of the community.

Another type of holding subordinate to individual tenure is farm tenancy, which although less common in Latin America than elsewhere is of gradually growing importance. Until the last few decades tenant farmers were few; the upper classes usually owned estates and the landless laborers lacked the resources necessary for working a property. Recent immigration, however, has brought into such countries as Argentina, Uruguay and southern Brazil a relatively large number of foreign laborers, many of whom have sought to acquire land or, failing that, as has often been the case, to rent land which they can farm for themselves; thus there has resulted a decided increase of tenant farming. In Argentina in fact the percentage of tenant farmers was in 1916–17 about 70 percent of the total number of producers of cereals. In Chile, although the amount of immigration has not been great, the ranks of tenant farmers have been filled very largely by natives of sections of Europe where independent farming predominates. Throughout Latin America foreigners, who come from the United States as well as Europe, are found as lessees of both large and small properties; they have often rented entire estates in Chile, Peru, Mexico and elsewhere. In Argentina, however, the Italians and Spaniards generally lease small farms or sections of large estates. Farm tenancy is becoming more general also among the native population. Large Chilean haciendas are not infrequently rented to neighboring *hacendados* or other members of the upper class and sometimes to ambitious administrators. In some countries tenancy is now quite common among the poorer native classes; for example, among Mexican Indians who were made landless when their communal villages were broken up. In Argentina *estancias* are frequently rented to middlemen and then sublet in parcels.

The rent, which varies greatly in amount, is generally a share of the crop—frequently half in Mexico and Argentina. In the latter country, however, and in Uruguay cash tenancy is much more prevalent than share tenancy. The type of tenure generally depends upon the crop. The rental is frequently onerous. The term of the lease also varies greatly. In many countries it runs from year to year. In Argentina the tenant seldom holds his land longer than five years, the time necessary for the preparation of the land by the tenant's grain crops for artificial seeding with grass, which is likewise done by the tenant. At the end of this period the *estanciero* turns his fields into pasture and the renters must leave. Tenancy conditions are in general regulated only by custom and the wishes of the landowner, against whom the tenant is usually helpless. He is frequently hampered in the use of his land by burdensome restrictions.

Most of the large holdings have remained in the hands of a single family for many generations, or ownership has been transferred within the same social group. Thus there has come to exist a small agrarian aristocracy holding a monopoly of the land. In Chile, for example, it has been officially estimated that 2500 individuals hold 50,000,000 acres of the total 57,500,000 in

private possession and that only one out of every forty persons owns land. Moreover the landed aristocracy, which because of its monopoly has retained an almost unbroken control of the economic, social and political life in most of the republics, constitutes a distinctly marked racial group which has preserved more than any other group the purity of the European strain. Frequently composed of descendants of the white invaders of early days, it occupies in areas in which a large Indian population still survives the position of a conquering race. In a few of the republics, where the aboriginal element was never large, this position is less marked.

In most of the Latin American countries the church has also accumulated extensive holdings, which it has formed into haciendas of great size and value. Although the Spanish and Portuguese governments attempted to prevent ecclesiastical acquisition of large properties in the colonies (the Spanish crown strictly forbade the transfer of land to any religious agency), the church nevertheless received much property through donations from individuals, legacies and foreclosures on estates mortgaged in its favor. The permanency of its organization helped it to retain much of its property and to become the largest landholder in the colonies. In the countries constituted after the winning of independence it has often held or approached this position. It has been estimated that in colonial Mexico not far from half of the landed property was in the hands of the church. At the time of its expulsion in the eighteenth century the Jesuit order held many of the best haciendas in the Spanish and Portuguese colonies. The income from many such properties has been enjoyed by religiously controlled hospitals, orphanages and schools; but so little have the church properties contributed to the economic benefit of anyone except the church itself and so much have they added to the power of the organization that the governments have not infrequently considered it necessary to break up the tendency toward permanent monopolization of land in "dead-hands" (mortmain). The entire holdings of the Jesuits in the Spanish and Portuguese colonies were confiscated and sold at the time of their expulsion. Mexico nationalized all ecclesiastically held property during the reform regime of Benito Juárez. Other nations have from time to time resorted to expropriation. In the presence of this menace the church agencies have tended to dispose of their real estate, turning their wealth into less tangible form, or have established holding corporations abroad with the hope of avoiding confiscation. Ecclesiastical landed properties, at least those held directly, appear to be fewer than formerly.

The *terratenientes*, as the large proprietors are called, constitute in most of the republics the bulk of the conservative party. Their conservatism reenforced by a close community of economic interest has brought them into close association with the clerical group and the resulting strong combination has dominated most of the history of Latin America. Opposed to this group is the mass of the common people, numerically far superior but less powerful because of its limited wealth, education, cultural advancement and sense of unity. This group, for the most part aboriginal or mestizo, comprises the holders of collective lands and their successors, the peons or *inquilinos*, and the free laborers on the estates as well as most of the urban laboring class, which is frequently drawn from the rural part of the group and shares its lot. The affiliation of the small individual proprietor seems to depend upon the degree of his removal from the aboriginal culture and from the system of collective holdings. Racially he usually belongs more closely to the *hacendados*; economically he has more in common with the great mass. The conditions imposed upon the small tenant also offer little opportunity for social and economic advancement of either the individual or group. Save for the exceptionally able or fortunate individual tenancy is only slightly better than peonage; it tends, however, to give the tenant some little participation in civic affairs, and the tenant is less fixed to a particular property than the peon and less subject to the control of a landlord. Tenancy thus contributes somewhat to the growth of citizenship and to the termination of the feudal relationships which have marked the agrarian life of Latin America. The influence of the peon, tenant and community group has not been as conspicuous as that of the *hacendados* but it has been recognized as important by those who have analyzed the forces operating beneath the surface in many of the countries. Occasionally it has found expression in uprisings—attacks upon haciendas and their owners or actual revolt of the rural population—which are usually described merely as Indian disorders.

While it is more difficult to determine the economic as opposed to the social effect of the dominance of large holdings, the belief seems to be quite widely held in Latin America that

it has resulted in a check on the development of productivity and that it has thus menaced national economic independence. With an absentee owner, a hired administrator and poorly paid peons the typical Mexican hacienda yields little more than enough to feed its numerous population. Where farm tenancy is widespread, economic results are usually better. Nevertheless, in Argentina, which exports both grain and pastoral products, complaint is made against the dominance of the pastoral interest, which checks the spread of cultivation on land suited to this purpose; against tenancy agreements which prevent diversification of crops; and against the brevity of tenancy tenure, which removes incentives for improving methods of cultivation. This situation is held to imperil the country's position in the world's grain markets.

The social and economic evils of the Latin American land systems have brought about legislative attempts to widen the distribution of landownership. These have been most far reaching in Mexico. A beginning has also been made with farm tenancy. For example, in 1921 legislation to regulate tenancy agreements—not, however, universally applicable—was adopted in Argentina. It forbade the placing of certain burdensome obligations upon the tenant, extended to him certain rights of cultivation and of making improvements, with compensation for the latter, and allowed him to retain his holding at least four years. But the legislation was seriously weakened by a specification which limited to 300 hectares the size of any area with respect to which the rights extended by the law could be claimed. Hence by forcing tenants to take up large areas collectively owners were able to evade the law.

A sphere of Latin American land legislation which has aroused considerable interest is that dealing with alien holdings. The danger of allowing large areas to fall into foreign hands constitutes a problem in some of the countries, since it may lead to serious international complications. An example is afforded by the case of Texas: in order to bring about the rapid settlement of its northern provinces Mexico offered free land to settlers; Americans responded more rapidly than Mexicans, soon threw off Mexican rule and then secured annexation to the United States. A new growth of foreign landholding in Mexico has brought about a desire to avoid a repetition of this loss. The constitution of 1917 and regulatory laws of 1925 provide that no foreign individual or corporation may hold agricultural property within 100 kilometers of a boundary or within 50 kilometers of the coast and that foreign holders of agricultural lands anywhere must agree not to appeal to their home government for protection of their interests in the holdings.

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See: OWNERSHIP; POSSESSION; FREEHOLD; VILLAGE COMMUNITY; FEUDALISM; MANORIAL SYSTEM; LATIFUNDIA; LANDED ESTATES; COLONATE; PLANTATION; APPANAGE; SERFDOM; ENCLOSURES; FARM TENANCY; ABSENTEE OWNERSHIP; LANDLORD AND TENANT; AGRARIAN MOVEMENTS; SMALL HOLDINGS; SOCIALIZATION; LAND TAXATION; HOMESTEAD; ALIENATION OF PROPERTY; LAND TRANSFER; SUCCESSION, LAWS OF; ENTAIL; ESCHEAT; AGRICULTURE; SERVITUDES; LAND SETTLEMENT; LAND GRANTS.

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LAND TRANSFER. The transfer of land is much more complicated than that of chattels. The immovability and permanence of land have given rise to numerous complications which make difficult the determination of title and consequently of transfer. Possession in the case of a chattel is usually a sign of ownership, and even when it proves deceptive the purchaser of a chattel does not ordinarily have to concern himself with the soundness of his title because of the

difficulty of tracing a movable. In the case of land possession except in very simple societies is no proof of ownership and the land remains for many years to answer any claim against it. But the threat to the title lies not so much in dishonesty as in the very complexity of land titles. The permanence of land makes possible a hierarchy of estates and tempts the owner to impose his will upon it long after his death, thus creating the problem of future interests. With a multitude of present and future, of possessory and non-possessory interests, the difficulties of transfer are correspondingly multiplied. They are still further increased in some countries by hangovers of feudal interests and by dower and more generally by joint ownerships, mortgages, judgments, tax and mechanics' liens. Then there are questions of boundaries, rights of way, water rights, mining rights and restrictive agreements. In Anglo-American law the ownership of a building may be divided horizontally so that one floor belongs to one person, another floor to someone else. The surface of the land may be owned by one person and the minerals by another. None of these various rights is necessarily barred by an attempt to transfer title; as time passes these interests become more complex. While in the United States the discovery of all possible claims to a piece of real property is fairly simple, in an older country like England the title becomes endlessly involved and theoretically must be traced back into the indefinite past. As long as land tenure remained communal, patriarchal or feudal, alienation remained relatively uncommon and transfer was generally by inheritance. In more complicated and especially in capitalistic societies, where transfer is a continuous occurrence, the problem of determining title and facilitating transfer is of primary importance.

Systems of land transfer both reflect and react upon land law. Formalities of transfer, even though they amount to the mere delivery of a deed, may seriously affect substantive law. Thus the requirement of livery of seisin in the English land law of the Middle Ages had much to do with the developments of the law of estates. So too the sweeping reforms of the Law of Property Act of 1925 were largely a by-product of the struggle over registration of title.

Because of the peculiar qualities of land and their implications the transfer of real property has usually been attended by more solemnity than has been the case with chattels and has been accompanied by a certain amount of publicity to insure knowledge of the exchange. The notions that land is unique and that it must be differentiated from other property are not peculiar to English law. They were characteristic of Germanic law, and although the difference disappeared for a time in Germany because of the influence of Roman law it has reappeared in the present civil code.

The two great systems of law, the Roman and Germanic, appear to have started with methods of land transfer which were alike in being ceremonial and compassed by a crowd of witnesses but which were otherwise quite different. The method in the classic Roman law was *mancipatio*: in the presence of five witnesses and a balance holder with scales the transferee held a piece of metal in one hand, recited a formula and struck the scales with the metal, which he then gave to the transferor, ostensibly by way of payment. This ceremony did not necessarily take place on the land. The *mancipatio*, however, was employed only for the transfer of Italic land. Elsewhere in the Roman Empire land was transferred by *traditio*, or delivery; and although the *dominium* of Italic land could not be acquired by *traditio* alone, yet at the time when Roman law was at its height it could be obtained by *traditio* plus a two years' *usucapio*, or adverse possession. This emphasis on *traditio* by the great Roman jurists seems to have had a vital effect in those countries where the Roman law was received in the Middle Ages, and even in England in the rigid insistence there on a livery of seisin, or delivery of possession. As the Roman law declined, however, the requirement of a direct transfer of control was abandoned and probably before Justinian, certainly in his legislation, the delivery of documents of title was treated as equivalent to *traditio*. It is probable that at the time of the barbarian invasions the inhabitants of the Roman Empire were transferring their land by written documents.

The early German method was a very elaborate handing over of the land itself. Various symbols were used, such as a piece of turf or a branch cut from the land. In addition there might be the delivery of a spear or a war gauntlet or the knife with which the branch had been cut. Then there would be a formal renunciation of the land by the transferor, emphasized by his leaping over the hedge, making renunciatory gestures with his fingers or throwing into the transferee's lap a little rod or staff known as the *festuca*, a highly favored symbol in formal contracts. Like the Roman *mancipatio* this

method seems to have been strictly private and not a governmental or community affair; both afforded adequate proof, but the Germanic method was more complete as it ended with the transferee in possession and appears to have had more publicity. The law of the Germanic conquerors was personal, not territorial. The Roman inhabitants retained their own law, although not uncorrupted, and undoubtedly influenced the law of their conquerors. At any rate among the Lombards and in the Frankish empire the requirements that the transfer should take place on the land disappeared. The old Germanic symbols were still often used, however, in combination with a written charter, which itself was treated as a symbol. Sometimes there was pretended litigation and a transfer in court. Thus a system of symbolic livery developed throughout the wide reaches of the Frankish empire. With its decay the transfer by charter seems to have gone out of use in Germany but to have maintained its vigor in Italy and in a large part of France. The symbols were retained in feudal transfers but were objected to by the Romanists as an unnecessary part of transfer by charter and finally became mere forms recited by the notary who ordinarily drew up the charter. As recited forms they survived in Italy and France until the period of the modern codes. In Scotland, where the land law is still largely feudal, the symbols continued to be a necessary part of transfers and had to be delivered on the land as late as 1845.

Transfer by delivery of the land or delivery of a charter was supplemented in the Frankish empire by transfer in court, first in the royal court, then in local courts. Transfer in court received a great impetus from feudalism. The lord's court was the natural place to transfer land held of him; in Germany from the eleventh to the thirteenth century it became if not the universal at least the prevalent method of transferring land held of or subject to the jurisdiction of a lord as well as land held in the towns, where the transfer took place before the town council. This method of transfer in the lord's court was known in Germany as *Auflassung*. It continued to be the regular method of transfer in an important part of northern France until shortly before the revolution and in the rest of the region of French customary law was not uncommon in the documents of title until 1789. It prevailed in England as to copyhold land until the abolition of the latter on January 1, 1926. With statutory developments it is the system which is at present in force in the Scandinavian countries.

Transfer in court involved a court roll, or register—English copyholders were tenants by copy of court roll—and it was only a matter of time before the register became the important element in transfer. The modern register dates back to this system of judicial transfer. In its earlier stages the transfer in court seems to have been transfer by collusive suit. There was precedent for this in the Roman law. On the continent the collusive action in the royal court apparently faded before the non-collusive transfer in the local courts. The process was reversed in England, where the regular method of transferring freehold land after the conquest was by the old Germanic method of livery of seisin with the most important supplement of transfer by collusive act in the king's court. There were two distinct methods, the fine and the recovery. Land held under a fine for a year and a day was with certain exceptions free from the claims of all persons. The recovery enabled one to hold land against those claiming under an entail. On the continent the ordinary transfer in court had some of the same effects.

In any system of law time must have certain healing results if only by the limitation of actions. Aside from the negative aspects it may give a positive title to the possessor. It did so in the Roman law first by a two years' *usucapio* and later by a *longi temporis praescriptio* of ten years if the parties were *praesentes*, of twenty years *inter absentes*. Then there was the *longissimi temporis praescriptio* of thirty or forty years, which was generally negative but might be acquisitive if begun in good faith. The early Germanic law seems to have known nothing worthy of the name of prescription, but the year and a day possession under a fine in England must have been a fairly efficient sort of prescription and the same outcome to possession for a year and a day under a transfer in court seems to have been widespread on the continent. The effectiveness of the fine accounts somewhat for the neglect of the statutes of limitation in England during the Middle Ages and the meager law developed under such statutes down to the abolition of fines in 1833. With the reception of Roman law on the continent the longer periods of the Roman law gained general acceptance.

Modern land transfer systems are of three kinds: transfer by registration of title, transfer by registration of deeds and transfer by deed or contract without registration. Hogg gives the

four characteristics of registration of title as the initial placing of land upon the register as a unit of property; the registration of transactions with reference to the land itself and not merely of instruments executed by the owner; the dependence of the validity of transactions upon registration; and, finally, the characteristic that initial registration and registration of subsequent transactions act in some degree as a warranty of title in the person registered as owner and as a bar to adverse claims. Taking these characteristics as the test, registration of title is the rule in the territory formerly comprised in the German Empire and Austria-Hungary, as it apparently was also in prerevolutionary Russia.

Compulsory registration of title was a natural historical development in the German, Austro-Hungarian and Russian empires. It was a short step from the transfer in court, so prevalent in the Germany of the Middle Ages, with its speedy barring of conflicting claims to the modern land register with its preclusive title. In many of the towns in Germany and in rural Bohemia the land registers date back well into the Middle Ages. The reception of the Roman law encouraged private, secret conveyancing for a time; but in much of the regional law conveyancing retained throughout that publicity which has been considered characteristically Germanic. The purpose of the conclusiveness of the old transfer in court was, however, to bar the claims of kin or community, while the modern bar is in the interest primarily of the investor. Registration of title leaves little place for prescription or the healing effect of time. The record is the important element and investors should not have to look beyond it. Registration greatly simplifies public administration. Its initiation in Austria-Hungary and Germany was aided by historical developments and by prevalent theories of government which exalted the state and minimized the individual. Here the compulsory clearing of titles and boundaries was moreover unhampered by exaggerated notions of constitutional right.

A virgin country offers unusual opportunities for the installation of a land register. No elaborate searching of titles is required and registration is cheap and effective. Sir Robert Torrens secured the adoption of such a register in South Australia in 1858 and in English speaking lands the system has since been known as the Torrens system. The system has had its principal vogue in Australasia and the newer Canadian provinces. The acts which installed the register in these countries provided that all subsequent grants by the government were to be registered. Title never passes in the case of such land until the notation is made upon the register. Registration of lands granted prior to the acts is voluntary. An insurance fund is built up from charges made on certain types of transfer to pay for any error made by the government.

Title registration is provided for by statute in many jurisdictions of the British Empire, including England, and in many states of the United States. With unimportant exceptions, however, it is either voluntary or its compulsory character is limited; and in none of these jurisdictions, with the possible exception of the Australasian and the recently settled western Canadian, is it the prevailing method of transfer. England in the past had in general neither registration of title nor registration of deeds. It needed one or the other, and in 1862 registration of title won a nominal victory by the passage of Lord Westbury's Land Registry Act. Voluntary registration of title proved a failure, however, and in 1899 registration of title in the County of London was made compulsory on sale. The register has met with the bitterest opposition especially from the solicitors, who regard the searching of titles as one of their primary sources of income; the Land Registration Act of 1925 provided that the area of compulsory registration should not be extended without the consent of the county council until January 1, 1936.

In the United States voluntary registration of title is provided for by statute in nineteen states; the results have been negligible in fourteen. In the metropolitan centers of the remaining five it has proved an appreciable factor in land transfer; but even in its most successful office, at Chicago, only one of every eight transfers has been made under the Torrens system. In California, Illinois and Massachusetts the statutes were enacted in the late 1890's. Investment corporations, with the exception of the title guaranty companies, like the system because it facilitates loans. General registration, however, would mean practically an action to quiet title for every plot of land in the country and involve an expense out of all proportion to its advantages. Countless defective titles would be exposed, which time would ordinarily heal. In the United States compulsory registration is out of the question and voluntary registration has proved a failure.

Registration of deeds is the prevailing system of land transfer outside the region of compulsory registration of title on the one side and the British Empire on the other. There is, however,

infinite variation within this system. There may be a land register where the land is plotted and transfers noted according to the individual plot as carefully as where registration of title prevails. Such is the scheme in the Scandinavian countries and in Scotland. Registration may be necessary for the transfer of the title even as between the parties, as in the latter country. The typical system, however, is that of France, Italy and the United States, where the registration is not necessary for the transfer of title between the parties but is for the protection of subsequent purchasers, mortgagees and even unsecured creditors. It is quite common in such a case to have the instruments indexed alphabetically by the names of grantors and grantees without reference to the particular plot. The work of registration is here largely clerical and is relatively unimportant as compared with registration of title. Third parties are protected against secret transfers, but the record is by no means an all sufficient system in which, as under title registration, the result is neatly tabulated at the end.

Registration of deeds appeared originally as the supplement to transfer by deed. Transfer of land by the delivery of a charter dates back to the later Roman Empire. It was a common practise in the Frankish empire, in Italy and in the portion of France in which written law prevailed; with the decline of feudalism it was revived in much of the country of customary law in northern France. In England after the Statute of Uses it came to be the current method of transfer, although for two hundred years or more two deeds were required, the lease and the release. The disadvantage of transfer by deed was that it was secret; but despite many attempts to assure enrolment or registration England still adheres to the system of secret transfers except for mortgages not protected by the custody of title deeds, which by the Land Charges Act of 1925 must be registered.

Registration of deeds is the almost universal method of land transfer in the United States. The record of land transactions is very bulky and the official indexes are arranged alphabetically by name of grantor and grantee. This necessitates a prolonged search and does not show conveyances which may be on the record but are outside the chain of title. To prevent repetition of searches the abstract has been developed; it contains the pertinent facts on the record and if properly made has only to be brought up to date whenever a new transfer or mortgage is contemplated. With the abstract has come the abstract book, an unofficial index of the records by lots or tracts, which greatly facilitates the search and catches the conveyances of record outside the chain of title. Unless some time limit is put on the abstract it becomes long and the examination to determine whether the title is merchantable is likely to be difficult and tedious. Because of the lack of certainty in titles there have developed title insurance companies which guarantee the holder for losses through defect of title. Such companies have made headway in many sections of the United States; their services are expensive, but this is mitigated by the fact that they make up for some, although by no means all, of the inadequacies of the familiar covenants of title and that they provide adequate financial responsibility.

It has been suggested that to avoid the expenses of taking title much of the work of the abstracter, the lawyer, the guaranty company or the title insurance company might be assumed by the government. There is no reason to believe, however, that this would be less expensive to the individual. Governmental action is likely to be both inefficient and expensive, and the policy of shifting the expense of a transfer of land from the individual to the public is of doubtful value. While the government might take over the abstract books and make the unofficial lot and tract indexes official, thus rendering duplicate books unnecessary, to assume the tasks of the title insurance companies would amount practically to registration of title.

PERCY BORDWELL

See: ALIENATION OF PROPERTY; POSSESSION; OWNERSHIP; SUCCESSION, LAW OF; LAND TENURE; MORTGAGE; FRAUDS, STATUTE OF; LIMITATION OF ACTIONS.

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LAND UTILIZATION. The principal uses of land are for crops, pasture or forest; mining or transportation facilities; recreational, residential, industrial or commercial activities. Frequently land is used for two or more purposes simultaneously; as, for example, woodland which is pastured. On the other hand, large areas of land sometimes lie waste. Recently there has been included within the meaning of the term land utilization the idea of land use planning; that is, the formulation and administration of land policies aimed at the employment of the land resources in the uses for which they are economically and socially best suited.

The most extensive use to which land in the United States is put is for pasture, the aggregate area devoted to pasturage, including woodland pasture, being not less than 1,000,000,000 acres, or more than 50 percent of the land of the nation. Fully half of this acreage consists of arid and semi-arid grazing land in the west. Forest and woodland, half of which is pastured, cover 500,000,000 acres; and in addition there are perhaps 100,000,000 acres of pinion juniper, oak brush and similar arid woodland types of vegetation in the western states. Crops, including crop failure, occupy about 375,000,000 acres, while over 40,000,000 acres of plowland lie idle or fallow. Roads and lanes cover probably 20,000,000 to 25,000,000 acres, and railroad rights of way 4,000,000 or 5,000,000 acres. Farmsteads, which are partly residential and partly agricultural and which sometimes are used for transportation and commercial or industrial purposes, occupy about 25,000,000 acres. Cities and villages include probably 12,000,000 acres. Finally, there are some 15,000,000 acres in national and state parks, cemeteries and golf courses. In mining regions the surface of the land is usually exploited for other purposes, and the area exclusively devoted to mines is therefore insignificant.

From the standpoint of value the order of importance is quite different. Urban land, including that used for residential, industrial and commercial purposes, has a value far greater than that used for all other functions; indeed the assessed valuation of land in New York City alone in 1929 was more than one fourth that of all the farm land of the nation. Because of this greater value per acre there is a hierarchy, so to speak, in land utilization. Commerce has first choice of the land, taking as much as is needed from other types of enterprise. Usually industrial and transportation uses press in upon residential use, but sometimes residential land has too high a value to permit such developments. With the growth of cities, suburbs and subdivisions press out upon crop, pasture and forest lands, which sometimes lie waste temporarily. Similarly, as consumption of farm products increases, the use of land for crops tends to replace the use for pasture or forest, because crops usually produce commodities of much greater value per acre. If crop products, however, can be imported more cheaply than they can be grown, as in England, pasture land may increase at the expense of crop land. In the originally forested portion of the United States pasturage until recently expanded at the expense of forest. Although it is probable that some forest land can be made to produce in the course of time and after heavy investment products of a higher value per acre than would pasturage on the same land, in general forest use ranks lowest in the hierarchy. At present much forest and cut over land in the United States has no value and millions of acres are tax delinquent. Land used for recreational purposes may have a very high value per acre, as in city parks, or a very low value, as in the Canadian north woods.

This hierarchy of land uses varies primarily with consumption and production factors. Consumption factors include number of people, consumption per person (or the standard of living) and net exports. Shifts in the consumption of some commodities, as from horses to automobiles, may greatly change the consumption of other commodities, as of oats. Production factors are principally land resources, transportation facilities and stage of technique.

The increase of population has been the principal consumption factor causing the conversion of forest or pasture into crop land as well as the transformation of a small portion of each of these three land classes into residential, industrial, commercial and transportation areas. Aggregate consumption per capita of farm products has changed very little in the United States since 1900—less than 7 percent in either direction from the norm—and it is unlikely to change greatly in the future. Agricultural exports have been sinking yearly to new low levels and now require for their production less than 10 percent of the farm land. It appears almost certain therefore that the nation's population will continue to be the dominant consumption factor

influencing the use of land for crops and pasture and probably also for forest. Because of the greater elasticity of the consumption of manufactured goods other than food and of various services, population is likely to prove a less important factor in determining the utilization of land for residential, industrial and commercial purposes, although it will undoubtedly continue to exert a very important influence upon these uses also.

From 1920 to 1923 the population of the United States was increasing nearly 2,000,000 a year. Ten years later the increase was less than 1,000,000. This decline in population growth doubtless will be slower in the future, since immigration can decline no further. A further falling off in births as great as that between 1925 and 1930 will, however, result in a stationary population soon after 1950, to be followed by a declining population, unless restrictions on immigration are relaxed. The approach to a stationary population will probably be accompanied by a slowing up of expansion in the urban uses of land, particularly for industrial and commercial purposes, and may be associated with great shifts in the utilization of land for residential purposes. As for agricultural expansion, and considering the nation as a whole, it stopped more than a decade ago. In 1931 the total crop acreage was smaller than in any year since 1917, with the possible exception of 1924.

Although the population of the United States would have been greater by 5,000,000 in 1932 if the rate of increase of 1920–23 had continued and these 5,000,000 persons would have required about 13,000,000 acres of crop land, the principal factor in causing a stationary crop acreage has been progress in agricultural technique. The fact that food and fibers have been produced for a population larger by 22,000,000 in 1932 than it was in 1917 without a net increase in crop or pasture area or a decrease in per capita consumption of farm products is due largely to two significant factors. First, the increase in automobiles and tractors and the consequent substitution of gasoline for horse feed have released for meat and milk animals the products of fully 30,000,000 acres of crop land. Second, improvements in animal husbandry have brought about greater production of meat and milk per unit of feed consumed, resulting in turn in an economy of apparently 25,000,000 acres of crop land. Other contributing causes have been the shifts from less productive to more productive crops per acre, principally from corn to cotton in the south (prior to 1931) and from wheat to corn in the western corn belt, and shifts from the less efficient classes of farm animals per unit of feed consumed to the more efficient, principally from beef cattle and sheep to dairy cattle and swine. There has been practically no increase in acre yields of the crops as a whole for thirty years.

The stationary acreage and acre yields of the crops in the United States have been accompanied by a westward shift in crop area. An increase of 33,000,000 acres of harvested crops took place between 1919 and 1929 in a third of the counties of the nation, located for the most part in the great plains region, where the mechanization of grain production and the introduction of drought resistant and shorter season varieties of crops made it possible to produce grain at a profit on land which formerly could be used only for pasture. Simultaneously a decrease of 32,000,000 acres of harvested crops occurred in nearly two thirds of the counties of the nation, located mostly in the east and south. In these originally forested lands the soils are in general less fertile (but receive more rainfall) than those of the grasslands of the west, while the farms are smaller and less adapted to the use of modern machinery. Moreover some of these farms are hilly, while others have suffered from soil erosion or other forms of depleted fertility. It is estimated by the United States Bureau of Chemistry and Soils that 17,500,000 acres of former crop land have been rendered non-tillable by erosion, and probably 100,000,000 acres or more have had much of the surface soil removed.

Seldom in the history of the United States has the future of agriculture been so uncertain as it is at present. Of the factors determining the utilization of land the trends of population and of per capita consumption appear the most dependable. Unless the restrictions on immigration are relaxed or a reversal of direction occurs in the trend of the birth rate, there will be but between 5,000,000 and 10,000,000 more people to be fed and clothed a decade hence. In view of the experience of the past thirty years it is probable moreover that each person will consume about the same aggregate amount of food and fibers ten years from now as today. Likewise the prospect for any great increase in the export of farm products is not encouraging.

It is true that soil resources are being depleted and that this depletion involves the eventual extinction of agriculture in many localities. Nevertheless, the resources of the nation are so

great that it is very unlikely that the trend of agricultural production for the nation as a whole will be affected for several decades at least. There still remain about 600,000,000 acres of land available for crops, of which nearly 300,000,000 acres need only plowing and planting to make them at once productive. Prior to 1930 it appeared that progress in agricultural technique was perhaps the most certain of all factors. Mechanization had been applied principally to the production of the small grain and hay crops. Most of the corn and practically all the cotton and fruit crops are still harvested by hand, as indeed they were a century ago. The mechanization of farm operations in connection with these crops, which require probably half of the labor on all crops, seemed likely to continue the trend toward the utilization of more level lands for crop production and the reversion of hilly, rough or stony lands to pasture or forest. Developments since the economic depression of 1930, however, have cast some doubt on this assumption of the continued rapid progress in mechanization. The small, more or less self-sufficient farmers have endured the depression better than the large commercial farmers. Mechanization is at a standstill, and many farmers who have horses are using these instead of their tractors because they have the feed and do not have the money to buy gasoline. It is possible that location with reference to roads, power lines and social services may become as important a factor as topography in determining the utilization of land for farming.

With the construction of good roads and the increasing use of the automobile and motor bus in the period following the World War a notable increase occurred in the number of semisuburban homes located along the highways near cities. Factory workers and business and professional men found it possible to cultivate a garden and keep chickens and even a cow and by putting in a few hours' work morning and evening materially to reduce their living costs. If such places produced $250 worth of products they met the census definition of a farm. Between 1920 and 1930 the number of farms under 3 acres, many of which were part time farms, increased 111 percent; those occupying 3 to 9 acres, nearly 18 percent; and those of 10 to 19 acres, 10 percent. On the other hand, all the farm groups between 20 acres and 500 acres decreased in number. This part time farming movement will doubtless continue with further improvements in transportation facilities, and it would be accelerated by the general adoption of a shorter working day. It seems likely to result in a greater demand for land near the cities and in industrial districts. Besides affording profitable and healthful employment of surplus time such garden homes can provide a considerable proportion of the family living during periods of unemployment. These little farms are especially attractive to persons who have retired from active work; the number of old people is increasing and will continue to increase rapidly for several decades.

Since the depression a new kind of back-to-the-land migration has set in, which may not prove to be insignificant locally with reference to land utilization. Thousands of urban unemployed have gone back to relatives or friends on farms, seeking shelter and sustenance. Some of these have farm experience, others have not; and almost none has the capital to engage in commercial farming. They are not needed to produce food and fibers, for a surplus of both exists. Nevertheless, it is likely that many will remain on the land, supplementing their incomes by doing odd jobs or perhaps finding regular employment in nearby cities or villages.

If, as is likely, there should be a recovery in commercial agriculture, the post-war trend toward more small and more large farms with fewer medium sized farms will be accelerated. This will mean more intensive utilization, in terms of labor, of the land located more favorably with reference to good roads and opportunity for non-agricultural employment and, in terms of capital, the more intensive utilization of the level and more fertile land remote from the cities. The less fertile or less level areas remote from good roads or cities will thus become less valuable and unless they afford peculiar advantages for recreational use will revert to forest or pasture or merely lie waste.

It is becoming clear that there is much submarginal forest land as well as agricultural land. Millions of acres of forest and cut over land are tax delinquent and in process of reversion to public ownership. Consumption of forest products has declined, and there is little prospect that private owners can recover the interest and taxes involved in carrying the poorer grades of land until a new crop of timber is produced. Fortunately low grade forest land, particularly forest land in public ownership, has other uses than production of wood. Forests protect watersheds, for they prevent land from eroding and lessen the severity of floods and the silting of rivers.

In the west forests regulate the flow of streams for irrigation and power purposes, while in the east they are utilized to provide a pure water supply for many cities and as aids in the equalization of the flow of rivers used for power. Forests also preserve wild life and provide recreation and aesthetic enjoyment. The trend is toward the use of the poorer grades of forest land for these purposes rather than for wood production. Michigan has set aside over 600,000 acres of tax delinquent land as state forests, and New York has adopted a constitutional amendment involving an appropriation of $19,000,000 to be expended over eleven years for the purchase of submarginal farm and forest land and the development of state forests and parks. The better grades of forest land either because of fertility or location, like the better qualities of crop land, seem likely to be used more intensively; while little more may be done with poor or remote forest land than to protect it from fire and in places develop recreational facilities. Farm wood lots generally belong to the better grades of forest land from the standpoint of fertility as well as location and constitute nearly one third of the forest land of the nation. Because they are of special value to the farmer, providing as they do products which he would otherwise need to purchase at retail prices, the improvement of their management is one of the greatest problems in forest policy.

Most studies of land utilization made thus far have been of small problem areas (counties or townships). Such studies involve a description of the use of the land, including trends in utilization, and a classification of the land based on the physical and economic conditions influencing its use. Data on tenure and area of the farm and non-farm land are collected. The productivity of the several classes of land when used for crops, for pasture and for forest is studied; and yields, values and costs of the agricultural commodities are compared. This leads to a consideration of the combination of the several farm enterprises into systems of farming on the various classes of land and the standard of living that could be maintained. Land utilization surveys also devote attention to the probable influence of changes in the use of the land on the distribution of institutions, on social relationships and on taxation and public expenditures in the area. In turn attention is given to the influence of social and economic conditions, particularly taxation, upon the use of the land. Occasionally the outlook for change in prices of farm products and in costs of production is given consideration; but as this involves studies of the factors affecting the trends of production and consumption not only in the region and nation but also in other parts of the world, such consideration of the outlook is often perfunctory. In addition, the relation of land use in the region or district to that in adjacent regions and indeed in the nation as a whole should be worked out but is seldom treated.

It is evident therefore that land utilization research has not only economic but also geographic and demographic aspects. The geographic aspect consists largely of a survey of the temperature, moisture, topography and soil conditions which influence the utilization of land for crops, pasture or forest. The demographic aspect involves studies of population distribution, composition, characteristics and trends not only in the area being surveyed but also in the nation and even in those nations to which agricultural products are exported. The information that may be needed in determining the best use of the land is normally of extraordinary breadth, and because of this fact as well as of the newness of the subject there are wide differences in the character of the information contained in the various local land utilization surveys.

With the prospect of great increase in population or in the export of farm products no longer in sight and with the assurance that progress in technique can continue, probably at an accelerating rate, if economic conditions permit, it is obvious that the former national and state policies of land utilization have become obsolete if not injurious. It is also apparent that new problems have arisen and that their solution is of basic importance not only to agriculture but also to the nation as a whole. Realizing this need the secretary of agriculture joined with the Association of Land-Grant Colleges and Universities in calling a conference on land utilization in November, 1931. Out of this conference there have developed two continuing committees, a National Land Use Planning Committee, whose function is primarily research, and a National Advisory and Legislative Committee on Land Use. The committee for land use planning has appointed eleven research committees to deal with the major phases of the subject: adjustment in submarginal areas; adjustment and reorganization in better farming areas; land inventories and land classification; agricultural outlook; forests, parks, recreation and wild life preservation areas; agricultural credit; adjustment and reor-

ganization of taxation in relation to land use; public range policy; reclamation, drainage and irrigation policies; control and direction of land settlement; land values.

Since the whole subject of land utilization is still in its formative stages, it is a little difficult to indicate with any degree of exactness the elements which should enter into a land policy in keeping with the changed demographic, social and economic conditions of the country. The following is a summary of the important recommendations adopted by the National Conference on Land Utilization in 1931. These mark out the paths which it now seems a national program should follow. First, the remaining public domain should be organized into public ranges to be administered by a federal agency and in coordination with the national forests. Second, lands in the Rocky Mountain and Pacific coastal regions that are valuable for watershed protection should be administered by the federal government. Third, a national inventory should be made of the nation's land resources and soils be classified on the basis of their agricultural value. Fourth, land development and settlement enterprises should be licensed and regulated. Fifth, the Reclamation Service should confine its efforts to finishing projects already started; new reclamation projects through either irrigation or drainage should not be undertaken until they are justified by the agricultural needs of the nation. Sixth, steps should be taken to outline and initiate a program of soil conservation whereby damage from erosion, leaching, increasing acidity, destruction of organic matter, deterioration of soil structure, overgrazing, flooding and alkali accumulation may be reduced to a minimum. Seventh, the completion of the soil survey should be hastened. Eighth, increased study should be given to all the factors determining the type of agricultural use best suited to each specific kind of land. Ninth, the federal and state agencies should develop a coordinate program of land utilization for the extensive areas of idle or misused lands. Tenth, the objectives in federal and state land acquisition through purchase should be materially amplified. The conference called upon the federal and state governments to coordinate "in defining the principles, scope, and methods of public land acquisition and administration, and in determining what lands should soon or ultimately be acquired and by what agencies."

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See: NATURAL RESOURCES; PUBLIC DOMAIN; LAND SETTLEMENT; RECLAMATION; IRRIGATION; HOMESTEAD; GRAINS; AGRICULTURE; POPULATION; CONSERVATION; LAND TENURE; LAND SPECULATION; REAL ESTATE; FORESTS; BACK-TO-THE-LAND MOVEMENTS.

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LAND VALUATION involves the process of determining the value of land, usually in terms of money. While it is a phase of valuation in general (*see* VALUATION), it derives its distinctive features from the peculiar characteristics of land as an economic good. Land differs from freely reproducible goods in its greater durability, negligible rate of physical depreciation, relative immobility and lack of homogeneity. From the greater durability of land and its consequent inflexibility in economic relations arises the peculiar emphasis in land valuation upon the future earning capacity of land. Because of the lack of standardization among the different units of land, the relative infrequency of sales and the disorganized, local character of the real estate market individual judgment plays a greater role in the valuation of land than in that of standardized goods in a better organized market. Land valuation like valuation in general involves in practise two closely associated processes, the technical appraisal of the various factors affecting the worth of the land, and the more general final judgment of value.

In valuation a distinction is usually drawn between two general classes of land. Residential sites or park areas, for example, are consumption goods, and the principles of valuation differ from those applicable to land as a production good. In some instances, as in the case of a farm, the two classes of land merge, although the valuation elements should be kept separate. The process of appraising the value of a particular piece of land as a production good may conveniently be divided into three steps. The first is capitalization of the income yielded or expected from the services of land in production. Land is expected, although often mistakenly, to yield an income for an indefinite number of years; and the purchaser of the land, who is buying the right to receive a series of annual incomes, often considers the past income as a guide to what the future income will be. Studies show that the income received from land for seven to ten years preceding sale is a most effective gauge of the price the purchaser will agree to pay. But since future incomes are uncertain they are ordinarily discounted at a current rate of interest; anticipated incomes forty or fifty years hence have, however, practically no influence upon present values. The commonly accepted formula for capitalizing the series of expected incomes into a sum representing the present value of the land is $V = \frac{a}{r}$, where V is the value of the land, a the annual income, and r the rate of interest. The value so found may be termed "productive value."

This formula, however, assumes a constant income from the land, whereas in fact the income may be expected to rise or drop. Consequently there may enter an element of "anticipated" value. The formula altered for this expectation will then read $V = \frac{a}{r} + (\text{or} -)\frac{i}{r}2$, i being the amount of expected annual increase or decrease. This formula is by no means exact or complete. At best it can be used only as a rough guide, for incomes from land ordinarily will not increase or decrease at a uniform rate. There may be increases in some years and decreases in others, and the formula would have to be altered to fit these refinements. Moreover the net income from land is difficult to ascertain because costs cannot be defined clearly. How much should be attributed to management and how much is the labor of the family worth? Where the fertility of the soil is built up, is that a cost or is it part of the permanent improvement of the farm? A $100 difference in the estimated income will make a difference of $2000 in the value, if income is capitalized at 5 percent; and even the interest rate may change materially. A forecast of future costs and incomes therefore necessarily involves considerable guesswork.

In European countries where population movements and land uses have been relatively stable, this speculative element plays a very small role. In England the value of land is expressed in terms of twenty or twenty-five years' purchase of the annual rent, the number of years depending upon the other elements besides productivity which enter into the calculation. In pre-war Germany the value of land was estimated to be approximately twenty-eight times the annual rent. In the United States, however, no such close relationship between rent and value exists. Studies made by the United States De-

partment of Agriculture indicate wide variations between cash rents and average values. Until 1920 land values were generally rising; since then they have been declining irregularly. Hence the i in the formula played a leading role.

Once the present "productive" value and any "anticipated" values have been ascertained, a second step is the addition to or subtraction from this "economic" value of the worth of such intangibles as the amenities of the site, the character of the community and the quality of home the land provides. The number of these psychological elements of value is legion and it is not easy to mold them into a precise formula. How precisely can we estimate in dollars and cents the worth of the prestige attaching to landownership, or the feeling that land is permanent, fixed and tangible and hence a sort of "savings bank"? Yet these are very real elements in the valuation of land. Finally, valuation will be affected by factors which produce a certain level of prices in the community. The land market is ordinarily rather narrow and local and the level of values in this local market is sensitive to such factors as the nationality of the inhabitants, their customs and standard of living, their racial origins and religious affiliations. Sometimes too the level of values in a land market will be profoundly affected by a considerable number of foreclosures and distress sales, as in the case of farms in periods of agricultural depression.

The growing complexity of modern economic life has widened considerably the range of purposes for which land valuation is undertaken. The most common purpose is the sale and purchase of land. The value ordinarily sought is "cash market value" under competitive conditions with "willing seller and buyer." For certain purposes, however, other values may be desired. Thus when land belonging to public utilities is assessed for rate making, the value of the land to the utility rather than the market value may be sought. Other occasions requiring valuation proceedings or appraisals are: purchase and sale of land for public use, leasing of property, issue of securities and consolidations, loans on real estate, division of estate, business inventories and assessments for taxation. While the purpose of an appraisal may affect its results, the price for which land can be sold may be taken as the usual bench mark, from which corrections may be made for special considerations.

The process of appraising generally involves the examination and weighting of the physical, economic, legal or other factors which influence the value of land. Among the physical factors in farm land appraising are: type and chemical content of the soil, variety of crops to which the soil is adapted, number of acres under cultivation, size and condition of fields, amount of woodland, topography, water resources, rainfall and drainage and length of growing season. Of the economic factors proximity to market in terms of time and cost is obviously important, as is also accessibility to schools and churches. The question as to whether a farm is of the right size for the type of agriculture and scale of operations is frequently overlooked. The burden of taxes, special assessments, drainage and irrigation charges is vital. If the farm has been irrigated or drained, the encumbrance of debt may be so large that profitable farming is virtually impossible. The adequacy, condition and modernity of the buildings or other improvements on the land are further significant factors in an appraisal. Moreover if the title to the land is not clear or is subject to liens, the value is necessarily affected.

In appraising urban land a distinction between business and residential property is fundamental. In residential sites the so-called amenities—view, spaciousness, eminence, light, freedom from noise, architectural style and symmetry—are prime considerations. Location also is important, but proximity to schools, churches and shopping centers is distinctly more significant than nearness to traffic. Indeed distance from a busy street with a heavy flow of traffic is more of an asset than a liability. Zoning and deed restrictions in certain sections tend to have a stabilizing influence on values. The cost of getting utility services to the site is a very appreciable item affecting particularly newly subdivided land on the outskirts of a city.

Business sites, particularly for retailing, derive their value chiefly from location with respect to pedestrian traffic and from the buying power of those pedestrians. For this reason the amount of frontage is important. Of two lots equal in area the one with greater front footage would ordinarily be more valuable, while corner locations command a premium. In all cases the value tends to be enhanced if the amount of land available is the proper size for the desired development. For instance, the cost of assembling separately owned small parcels for large office building sites is an appreciable item. The weighting of the various factors in an appraisal of a business site often varies according to the type of business. For factory sites nearness to transportation facilities, accessibility and cost of

power and availability of water supplies are in many instances prominent factors influencing the differential values of lots within a city. In both urban and farm lands the process of valuation is obviously simplified in case of a very active land market, where the actual sales prices of comparable units of land in the locality form the basis for imputing a value to the land under appraisal.

Appraisal of forest and mineral lands is a specialty. Forest land appraisals are predominantly influenced by the fact that trees require from thirty to one hundred and fifty years to mature. Thus the income has to take care of costs accumulated over many years. During the growth period incidental income may be derived from the leasing of grazing rights or gaming privileges. The land once cleared of trees, according to prevailing practise, is available for resale for other uses. In the United States the once vast amount of virgin timber led to a consideration of forest land like mineral land as a resource to be exploited. Very recently a few states have begun to adjust their tax and land use policies to the treatment of forests as a crop. The effect these changes may have on American appraisal technique is still uncertain.

In mineral lands there is nothing comparable to a recurring crop; the amount mined is so much taken from the future supply, and valuation must meet the problem of balancing future needs and present requirements and evaluating the factor of depletion. Since subsurface minerals are hidden and their exact position and amount are not definitely known, speculation plays an important part in the appraisal of mineral lands. The task is still further complicated by international politics, tariffs, national defense policies, royalty laws and practises, corporate mergers and the competitive struggle for mineral reserves. At present mineral experts look to a lengthy period of relatively low prices for mineral land, because most of these industries have geared their operations to an expected rate of growth in population and demand which is unlikely to be experienced.

Notwithstanding the growing complexity of economic life and the multiplication of influences upon land values many appraisers have sought to simplify, standardize and give a semblance of mathematical accuracy to their value estimates by developing appraising formulae. There are formulae for urban land giving weights to corner influence, depth, frontage and the like; and in agricultural land soil, climate, topography, productivity and location are sometimes given definite weights. Appraising by standard rules or formulae is not yet generally substantiated or accepted. To be sure, human judgment is improved by orderly classification of land uses and of the factors affecting market valuations, but despite some opinions to the contrary it is not believed that the intricate process of determining prices of an unstandardized, inflexible commodity in a disorganized local market can ever be reduced to rule of thumb formulae. Widespread defaults on mortgages and failures of banks in recent years attest the need not only for better methods of appraising but also for appraisers with high professional standards.

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See: VALUATION; RENT; LAND SPECULATION; APPRECIATION; REAL ESTATE; LAND MORTGAGE CREDIT; LAND TAXATION; ASSESSMENT OF TAXES; EMINENT DOMAIN; RATE REGULATION.

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LANDAUER, GUSTAV (1870–1919), German anarchist. Landauer was born in Karlsruhe of Jewish parentage. Poet, philosopher and politi-

cian, he emphasized the cultural and moral values of revolution. He wrote novels, tales and many philosophical and literary essays and translated the works of Oscar Wilde, Bernard Shaw and other authors. From early youth he was an adherent of socialism, on the ethical aspects of which he laid particular stress, but he rejected official Marxism and sharply attacked German Social Democracy. He considered the chief task of labor to be the abolition of the state and its replacement by small communes, producers' associations and cooperatives. In his final aim Landauer was in agreement with Marx, who also demanded abolition of the state in favor of a classless society; but he unconditionally rejected the use of political action in the workers' revolutionary struggle, which Marx and his disciples recommended. He therefore confined his activities to working men's cultural and literary organizations. His model in many respects was the great French anarchist Proudhon. His hostility to the state led necessarily to sharp opposition to militarism and every form of force. Landauer early pointed out that the nations of Europe were menaced by a colossal war, and he considered it his special task to enlighten the workers concerning this peril. He did not believe that the socialist International could prevent it, and he urged the workers in that event to oppose the war plans of the government by means of the general strike. During the World War Landauer definitely opposed the policy of the German government. After the revolution in 1918 he issued a program for a republic of communes and cooperatives and went to Munich, where he sought to cooperate with Kurt Eisner, the president of the Bavarian republic. When in April, 1919, the Soviet republic was proclaimed in Munich, Landauer was active in it for a short while but broke with the Communists over their policy of force. He was murdered by soldiers of the victorious governmental troops when they captured Munich and overthrew the Soviet republic.

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Important works: *Skepsis und Mystik* (Berlin 1903); *Die Revolution* (Frankfort 1907); *Aufruf zum Sozialismus* (Berlin 1911; 4th ed. Cologne 1923); *Shakespeare, dargestellt in Vorträgen*, 2 vols. (Frankfort 1920); *Beginnen; Aufsätze uber Sozialismus* (Cologne 1924). See also *Gustav Landauer, sein Lebensgang in Briefen*, ed. by Martin Buber and Ina Britschgi-Schimmer, 2 vols. (Frankfort 1929).

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LANDED ESTATES. As a distinctive form of large private fortune landed estates have played an important role in economic and social history. Even where the ownership of landed estates is combined with entrepreneurial activity in agriculture, as is true in most cases, and thus represents more than the mere appropriation of that peculiar species of income, rent, land affords a particularly lasting basis for economic monopoly and the exercise of social power. The more popular formulations of the Ricardian theory of rent from Henry George to Franz Oppenheimer have always tended to ascribe social inequality and exploitation, and sometimes even political domination in general, mainly to the extensive appropriation or monopoly of land in contradistinction to other forms of private property.

A more objective analysis reveals that landed property has commonly been—not only under the mediaeval feudal system—at the border line between what jurists distinguish as public and private; the landed estate represented a combination of private property with political power and has been used as a device for political and administrative decentralization. Such combination cannot be fully explained by reference to lack of differentiation under primitive conditions. The phenomenon reappears in the modern period in the exercise of exceptional administrative powers by British colonial companies in Africa and in the sweeping monopolistic powers enjoyed for a time by transcontinental railroads in the United States. In both cases power has been associated with the ownership of large tracts of land which tended to broaden out into territorial and political domination.

The controversy as to whether the first appropriation of land was collective (tribal or communal) or individual (patriarchal or seigniorial) reflects the difficulty and perhaps the impossibility of distinguishing between the public and private aspects of land domination. The right of eminent domain, claimed alike by tribal chieftains, oriental despots and feudal kings, is a "public" right which limits the prerogatives associated with even the largest and most powerful landed properties and fiefs. On the other hand, all "private" landed possessions of considerable size, for example, the *Grundherrschaften*, *seigneuries* and manors of mediaeval Germany, France and England, tend to become public administrative units either by utilizing older political powers or by acquiring new ones in the form of "immunities." It is not without significance in this connection that English com-

mon law has given to landed property the name estate, which in another form has come to designate the modern concept of political government.

Historical civilizations have produced several different types of landed estates. One type is characterized by the prominence of the larger landed proprietor who possesses offensive and defensive arms and particularly the more advanced military technique. The best illustration of this type of proprietor is the mounted warrior in Greece (*hippeus*), Rome (*eques*) and the Middle Ages (knight, *chevalier*), who is clearly differentiated from other classes and exercises an increasing control over smaller landed proprietors and peasants. The basis of another type is the credit dependence of smaller landholders on larger or of landholders generally on the commercial capitalists of the towns; this type is frequently connected with the first, or political, type but as often assumes a purely economic character. In all earlier civilizations the credit legislation and social revolutions aiming at the cancellation of debts illustrate the importance of credit, both in building up landed estates and in changing their ownership.

Under governments ruling a large territory, such as the kingdom of the pharaohs or the provincial administrative units of the Roman Republic and Empire, the estates of both secular magnates and religious institutions act alternately as rivals and allies of the state authority and the state domains. Where a substantial and articulate peasantry is present, the two chief tasks of the government—tax collection and cultivation of the state lands—can be solved by cooperation between the central authority and the peasantry, accompanied as a rule by considerable hostility toward the large private estates. When economic or political decline weakens the system of peasant farming, governments are compelled to have recourse to the large estates to assure collection of the land tax and cultivation of the soil. The history of land policy from the *ager publicus* and private latifundia of ancient Rome to the settlement of government lands in the United States and the British colonies shows clearly an alternation in the emphasis placed on landed estates or small holdings as the more likely means of solving the problem of land taxation and land exploitation.

There are many variations in the functional activities of the proprietors of landed estates. Proprietorship may be limited to the mere receipt of rents, either because the estate is of great size with many middlemen as agents or farmers or as a result of one or more of the circumstances producing landlord absenteeism, such as military and administrative tasks incompatible with direct supervision of farming; strained relations with a peasantry of different race and culture, as in Ireland, Lithuania, Hungary, Galicia and Rumania; or the cultural attraction of life in cities or in foreign countries, as in the case of Russia and Poland. Yet, contrary to common opinion, pure absenteeism has been and probably still is something of an exception. The English and French landlords who succeeded the manorial lord and the *seigneur*, whether they let their lands to tenant or gentleman farmers, seldom represented the simple rent receivers envisaged by Ricardian theory. In England landlords always made farming contracts not only as owners but as capitalistic entrepreneurs responsible for certain major improvements of the soil. While in western Germany, Bavaria and Alpine Austria *Grundherrschaft* became indeed a conglomeration of seigniorial rights with the soil predominantly in the hands of old and often well to do peasant farmers and proprietors, in the east, particularly beyond the Elbe, the *Rittergut* of the *Junker* gentry, which developed out of the *Gutsherrschaft*, solved for the first time the problem of large scale proprietor cultivation by a revival of the feudal system of peasant labor services (the German *Fronen* and Slavic *raboty*), which in the older western countries dwindled to insignificance after the fifteenth century (as in the case of the French corvée).

In France and western Germany the so-called emancipation of the peasantry aimed primarily at the commutation of seigniorial rights together with abolition of most of the common fields and common pasturage systems. In the east, however, emancipation resulted either, as in Germany, in the transformation of estates worked by feudal labor services into "home farms" (*Restgüter*) worked with wage labor recruited largely from members of the old peasant class, who in the course of emancipation were compelled to yield from a third to half of their holdings and were further weakened by indemnity payments for the land they retained; or, as was mainly the case in Russia after the abolition of serfdom, in the transformation of the estates into smaller "home farms" or into holdings of tenants who formerly had been the serfs of their landlords. In both cases cultivation by large proprietors was left in a precarious position. Where freedom of migration existed, estates

gradually lost their wage laborers, who emigrated to the industrial west or overseas. Where emancipation stopped halfway, as in Russia, where the village community was preserved, or in the Danubian and Balkan countries, emigration was accompanied by general agrarian unrest, which led to the "cry for land" and the consequent participation of the peasantry in the revolutions of 1917 to 1920—an experience repeated in the more recent Spanish Revolution.

These revolutions have been called not incorrectly the final act of agrarian reform and peasant emancipation in Europe; they aimed directly at expropriation, with more or less nominal indemnity, and division of the landed estates. In Russia the satisfaction of the peasants' land hunger was merely the transition to collective agriculture in state or cooperative farms. But in the rest of eastern Europe, including the Baltic states, the succession states of the former Austro-Hungarian monarchy and the other Balkan states, the break up of landed estates did not produce an economically efficient and socially stable peasant agriculture. This is of course partly due to the obvious difficulties of educating a peasantry depressed by centuries of social servitude and inferiority in the tasks of independent production and marketing, especially during an increasing and increasingly universal agricultural crisis. To a large extent, however, the slow and doubtful success of agrarian reform in eastern Europe may be ascribed to the indispensability under present conditions of some of the economic and social functions of landed estates. In many instances the estates have been not only important cultural factors, but also the necessary models of extensive grain production for large export markets as well as of forest cultivation. Not only in agriculture but also in mining and metallurgy the landed aristocracy, as in the case of the Upper Silesian magnates, played an important economic role as promoters. This helped to assimilate the large landowner to the industrial and commercial bourgeoisie, which in turn acquired landed estates of its own; in England, for instance, leading bourgeois families entered the ranks of the landed gentry and even nobility by the purchase of estates or by marriage.

The decline of the landed estate in Europe has been accompanied by the shift of grain farming to the great oversea countries as a result of the natural precedence given by peasant agriculture to cattle, dairy, poultry, vegetable and fruit farming. The transformation of the class structure of modern society entailed by this decline would seem to lead logically to the abolition of the privileged rights of undivided inheritance of landed estates, particularly the continental European fideicommissa, sanctioned by modern governments in place of the succession laws of the Middle Ages; but the preservation although in modified form of entail in England and the tendency in various countries to preserve and reenforce undivided inheritance of substantial peasant farms seem to prove that land as a factor of production retains features antagonistic to the individualistic concept of property. While in the agrarian countries landed estates disappear as the result of direct attack by reforming governments, in the more developed capitalistic countries the modern systems of income, property and inheritance taxation effect the same result indirectly; for the incidence of taxation is especially burdensome on landed estates as compared with other forms of enterprise because of the marketing and credit difficulties besetting agriculture at present. Modern governments, however, may yet be forced to assist in the solution of these problems even for the benefit of large scale farms, especially since heavy taxation does not necessarily break up estates; in England, for example, there has been a tendency for overburdened estates, instead of being divided, merely to pass from older landed families to new proprietors of superior wealth or capacity.

On the whole the great question at present seems to be whether landed estates will be succeeded by farms of small size ranging from capitalistic to peasant family holdings or whether this liberal system of competition and private property will give way to large scale or collective farms after the Russian or some other model. The latter development would indeed be a belated justification of some of the economic functions of landed estates. In fact the problem of the correct size of farms and of the proper system of farming will probably find a variety of solutions, depending upon geographical, economic and historical conditions. Should development be more or less uniform, the newer continents, particularly America, with their virgin soils and consequently less limited possibilities of agricultural exploitation might exert an altogether novel influence.

In the United States the landed estate of the colonial era was on the whole unable to secure the necessary labor force among the white colonists, except where half servile indentured labor was available or where, as in Dutch New York,

the democratic spirit was not very strong. The southern plantation imitating the English manor met the difficulty by importing Negro slave labor. Only a provisional settlement of agricultural relations followed the abolition of slavery in the south; remnants of the old servile farm labor persist, just as peonage still lingers in various forms and stages among the Indians in Mexico and South America. Nor has anything like a static equilibrium been attained in the Americas as between proprietor and tenant cultivation or with regard to the optimum size of agricultural holdings. The situation in the United States is greatly complicated by the recent accelerated growth of means of transportation for the rural population and of cultural intercourse with urban centers, which have to a large extent effaced the old distinction between the living conditions of town and country. Conditions in Russia, where experiments in collective agriculture are under way, are quite different from those in American countries, particularly in the United States. Yet even where the domination of the cultivators by great capitalist interests, such as railroad, water or development companies, is declining, it is likely that under favorable conditions of economic geography large farms even on the scale of latifundia will continue or will develop anew under corporate control; some features of the landed estate will thus be preserved in a political atmosphere which precludes agricultural enterprise by government itself.

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See: FORTUNES, PRIVATE; INHERITANCE; LAND TENURE; PRIMOGENITURE; ENTAIL; ARISTOCRACY; ABSENTEE OWNERSHIP; AGRICULTURE; LATIFUNDIA; COLONATE; MANORIAL SYSTEM; ENCLOSURES; PLANTATION; FARM TENANCY; PEASANTRY; AGRICULTURAL LABOR; AGRARIAN MOVEMENTS; SMALL HOLDINGS; LAND TAXATION; FARM MANAGEMENT.

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LANDLORD AND TENANT. The relationship of landlord and tenant, or, to use general terms less intimately associated with the common law system, lessor and lessee, has always loomed large in the law of property since the early days of civilization. Not only lands and dwellings but things and even immaterial rights have been leased. Although changing social and economic conditions have continually modified many of the fundamental terms and even the character of the lease as a form of legal transaction, the principal object to be achieved by its use has remained much the same. It has served as a means for transferring the use and benefit of property for a determinate period in order to secure a return in the form of rent.

It is extremely difficult, however, to mark the limits of a historical or comparative treatment of the lease as a form of legal transaction. The common law regarded the letting of a thing for hire as a bailment, while in many other systems such a transaction has been considered a lease of movable property. But even within one system it is often difficult to understand why a particular form of holding should be regarded as complete ownership while another is held to confer only a leasehold interest. The legal concept and the economic reality do not always coincide. Economically a perpetual lease is hardly to be distinguished from ownership. Moreover forms of holding which amount to less than complete ownership but which still rest upon some tenurial basis are not ordinarily regarded as leases. The modern conception of the lease is that it is primarily a form of bilateral contract which creates no relation of personal dependency.

Thus in the Roman law such forms of tenancy

as precarium and emphyteusis had many of the characteristics of a lease, although their exact juristic nature long remained in doubt. Precarium, which was of importance only in the early history of Rome, was the tenure on which clients cultivated the land of their patrons during the pleasure of the latter, paying no rent. Emphyteusis was a grant of land either in perpetuity or for a long term on condition of the payment of an annual sum (*canon*) to the owner or his successor. The origin of this form of tenancy is traceable to the long or perpetual leases granted by the Roman state to lands taken in war, *ager vectigalis*, the rent for which was termed *vectigal*. Ecclesiastical and municipal corporations created emphyteutic grants, as did individuals from the time of Constantine in order to be relieved of management problems. A constitution of Zeno determined that emphyteusis was neither sale nor hire but a special juristic transaction. Yet the tenant's rights were almost as complete as an owner's. He clearly had the right of use and enjoyment, the right to alienate the property by sale subject to the owner's right of preemption and the right to mortgage it and transmit it to his heirs, and he had to pay taxes. Throughout the length and breadth of the Roman Empire, the *agri limitrophi* were held by Roman veterans on the terms of an emphyteusis, and this double form of ownership became part of the current which ultimately led to feudalism in western Europe. Indeed the emphyteusis has thoroughly survived in some continental European and allied systems of law.

The bilateral contract of letting and hiring, the normal short term lease, of the Roman law was the *locatio conductio*. Like *emptio venditio* it had a double name because the obligations of the parties differed. The names indicate an earlier phase in which the contract was completed only by handing over the res, since *locare* and *conducere* both imply physical displacement. It may perhaps also be surmised that the earliest lease was probably of chattels. *Locatio* had three forms: *locatio rei*, the letting of physical property; *locatio operis*, the letting of a job; and *locatio operarum*, the letting of services; only the first is of present concern, however, although it should perhaps be observed that the Roman conception of a labor contract as a lease of labor is interesting. The term used to define the hirer of a house was *inquilinus*, and his rent was termed *pensio*; the hirer of a farm came to be termed *colonus*, and his rent *reditus*. It was probably the rule in late classical law that the rent had to be in money; this was certainly true under Justinian. *Locatio* created only a *jus in personam*, not a *jus in rem*.

In the Middle Ages in western Europe the Roman *locatio* seems to have been all but forgotten. While there were undoubtedly borrowings from the Roman forms of tenancy, these underwent such profound transformations as to become almost unrecognizable. The genius of the Germanic peoples seems to have expressed itself in the proliferation of a vast number of tenurial rights which differed from the Roman leasehold in that they were real rights. They were a necessary corollary of feudalism. The contractual lease for terms of years evolved only very slowly and not until the later Middle Ages. It was moreover largely an urban development.

Thus in England, where there existed freehold estates of an indefinite direction, estates for definite terms of years did not begin to be created to any large extent until the thirteenth century. Although terms of years are not mentioned in the Anglo-Saxon land books, it cannot be asserted that they did not exist before the Conquest. The nearest approach to a leasehold interest in the mediaeval law was the life estate, which would arise when land was limited to a person during his own life or during the life of another (*par autre vie*); and this form of estate played a large part in the strict settlements so common under English law down to the end of the nineteenth century. But although a life estate might terminate much sooner than the average term of years, the law regarded only the former as a freehold, probably because it was created among classes whose privileges were bound up with freehold tenure. The practise of creating terms of years was the result of the breakdown of villein tenure and the decay of the labor service system, and once started it spread rapidly, particularly in the sixteenth and seventeenth centuries in order to encourage the growth of agriculture. The term of years presented numerous advantages when compared with other forms of English holdings. Because the right of the tenant for years was regarded as purely contractual it was treated as personalty, not as realty, and thus had the incidents of personal property; that is, it was devisable, it was not subject to the various feudal incidents and it did not go to the heir on intestacy.

The English law distinguishes various leases of lands or dwellings by the duration of their terms. The term of years, which is the most

common form, ends automatically at a fixed date; and there is no limit to its length except that set by the Settled Land Acts on leases given by a tenant for life. Leases, however, for unspecified periods or for periods incapable of determination are void for uncertainty as leases in perpetuity. Tenancies from year to year are the practically universal form for agricultural lands and are either created by express agreement or arise by operation of law where a tenant at will or a tenant at sufferance pays a yearly rent. A term of years now includes terms for less than a year. A tenancy at will, which even under modern English law is equitable and not legal, exists, as its name implies, only at the will of the parties. While tenancies at will may be created by express limitation, most of them are implied under various situations. Because they were so uncertain English courts early showed a willingness to enlarge them into tenancies from year to year by indulging presumptions. A tenant at sufferance differs from a tenant at will in that his holding over after the termination of his term is wrongful.

Of the two most important modern civil codes, the French and the German, the former follows the Roman *locatio* very closely. It recognizes not only a lease of things but a lease of work. Among leases of things it distinguishes between *bail a loyer*, the letting to hire of houses, and *bail a ferme*, the letting to farm of rural properties. It also treats separately the *bail a cheptel*, the letting of a stock of cattle. Despite these distinctions the French lease is apparently like the Roman *locatio conductio* a unitary legal transaction. The German civil code has, however, departed from the Roman law in distinguishing two forms of lease, *Miete* and *Pacht*. The first confers only a bare right of users, the second also the right of taking the fruits and profits of the leased property. This usufructuary lease is naturally the form assumed by farm leases. Unless otherwise indicated, however, all the provisions of the code relating to *Miete* apply also to *Pacht*.

The lease as the most continuing type of legal transaction has been particularly subjected to a great many rules. The problems have been much the same in all legal systems, but the solutions have sometimes varied considerably. Only some of the more important rules will be examined here. The common law implied the terms of a lease only to a slight degree from the existence of the relationship of landlord and tenant. It left the parties to do their own contracting. Despite the subsequent enactment of statutes it may still be said that English law contains fewer regulations than code systems. In both common and civil law systems, however, the legal provisions are not usually imperative. They apply only in default of special agreement. The result is that in legal practise the drawing of a lease becomes very elaborate.

The absolute requirement that a lease be in writing does not prevail in all legal systems. The Roman law apparently required no writing. An oral lease was valid at common law but the Statute of Frauds (which has been confirmed by subsequent legislation) declared void oral leases for longer periods than three years. Nevertheless, if there was a commencement of performance, the lease took effect at law as a lease from year to year and in equity for the actual term intended. An oral lease is valid under the French code but is under certain disadvantages: thus the landlord will be believed on his oath as to the rent. Under the German code a lease of land for a longer term than one year is required to be in writing, but it is also provided that if it is not it shall take effect as a lease for an indeterminate period. As a form of contract the lease is peculiar in that it often is renewed automatically by operation of law if the lessee holds over. In the Roman law a tacit *relocatio* for one year took place, and it is commonly allowed under modern continental codes for various periods and subject to certain conditions.

The adequate protection of the lessee's possession has been a comparatively late development in most legal systems. As a result of the fact, on the one hand, that the leasehold developed legally under the law of obligations, and, on the other, that economically it involved a relation of personal dependency the possession of the lessee has often been very precarious. In the Roman law the *conductor* had neither *dominium* nor *possessio* but only a right of detention. If the *locator* sold the leased property, thus conferring a *jus in rem* upon the purchaser, the *conductor* had merely a right to damages against the *locator*. To be sure, the death of neither *locator* nor *conductor* terminated the lease, a rule that is now accepted in most western legal systems; but the late classical law even allowed the *locator* to terminate the lease of a house if he needed it for his own use or even if it wanted repair. In English law it was not until the end of the fifteenth century that the possession of a lessee was protected not only

as against the lessor but also as against interfering third persons. The common lawyers could not conceive of a term of years partaking of the mystery of seisin, which might be defended by the great Assize of Novel Disseisin, and there is more than a suggestion that they made eager use of some scraps of Roman learning. Before the middle of the thirteenth century an action *quare ejecit infra terminum* had been given the lessee to prevent his being turned out by a purchaser from the lessor, but it was not until the invention of the writ of trespass that he was given protection against all other ejectors. Despite the special protection accorded to possession in Germanic law some Germanic systems recognized the rule "*Kauf bricht Miete*"—thus the Frisian-Saxon law and the old French law. The rule obtained a general common law validity in Germany as a result of the reception of the Roman law and was adopted in the modern Saxon and Austrian codes. On the other hand, it was rejected by the Prussian code and the *Code civil* and finally by the present German civil code. Whether the lessee now confers a "real" right under a particular continental code is often open to question. The common law view now is that a lease is a conveyance of an "estate" in the land. Apart from the formal legal theory a lease is perhaps something more than a mere contract. At least it is a specifically enforceable contract, enforceable against not only the contractor but also third parties.

The common and civil law systems differ most perhaps in their regulation of the respective obligations of lessor and lessee. The common law was exceptionally harsh upon the tenant, and although its rigors have been softened to a considerable extent by legislation, it is still less favorable to the tenant than either the Roman law or the present French and German civil codes.

Thus at common law there were implied only a very few obligations on the part of the landlord. There was not even an implied warranty of suitability or habitability, although this now exists in the case of houses. The tenant was liable not only for "permissive" waste, that is, allowing the property to deteriorate through acts of omission, but even for "ameliorative" waste, that is, changing the character of the land although its value was increased thereby. Thus the obligation of keeping the premises in repair was entirely on the tenant. Moreover he could not usually remove fixtures which in contemplation of law became attached to the real property. The tenant was also under an obligation to pay taxes and charges and bore the risk of the accidental destruction of the premises. Among the few rights favorable to the tenant was the right to sublet. Agricultural tenants had the rights of estovers and emblements. The tenants' rights have been improved, however, either by judicial decision or legislation. Thus notice is required to terminate some tenancies; there is now a right to remove not only trade and agricultural but also ornamental fixtures; and agricultural tenants have a right to compensation for improvements. Under a recent act a tenant of business property whose lease is terminated has a right of compensation for goodwill.

The rights of a lessee in civil law countries may almost be described by saying that they are usually the precise opposites of those that prevailed under the common law. This more liberal tradition is in accord with the Roman law which put most of the burdens in *locatio conductio* on the *locator*, who had to keep the leased property in repair, pay taxes and other public charges and bear the risk of accidental destruction. There was even recognized the general principle that rent was in respect of enjoyment; and thus if climatic or other conditions had caused a failure of crops, the conductor could claim a rebate. The German civil code, which is almost a century later than the French, is not very much more liberal. The rights of agricultural tenants under both codes are more limited than those of urban tenants.

One of the great causes of friction between landlords and tenants has been the exercise of the right of distress by landlords, one of the few survivals of self-help in modern legal systems. The landlord, when the tenant is in arrears of rent, may enter the leased premises and seize the chattels found there. At common law all goods upon the premises were subject to distress, but this extensive power has now been cut down by exempting certain property from distress and by protecting goods belonging to an undertenant or lodger. At common law also the landlord could only impound the chattels, but he is now permitted to sell them. The landlord of course still has his action for the rent as well as a right of eviction. An equivalent for the right of distress for rent exists under the French and German civil codes. Both codes contain provisions for statutory pledge rights over the tenant's goods, rights deriving from the Roman law.

As far as forms of tenancies are concerned the

American law of landlord and tenant has copied that of England, except that life tenancies have in some states been modified by statute. But most American states have to a large extent modified the English rules in other respects. The principle of the English Statute of Frauds has been adopted in most states, in some as part of the common law; elsewhere the statute has been reframed so that a period of one year has been substituted for the English three during which parol leases are valid. The rule as to the effect of a tenant entering into possession is much the same as the English, except that there is very little authority as to the treatment of such a lease in equity. In the law of a number of states there is a limit as to the time for which certain leases, such as agricultural and mining leases, can be made. Maryland has provided by statute that except in the case of business leases it shall be impossible to grant a lease for longer than fifteen years, unless the tenant can redeem it at a certain price. In certain sections of the country, particularly in Ohio and Illinois, long term leases have been developed as a device for the holding and financing of business property. With respect to automatic renewal of a lease the American doctrine is that the landlord can at his option either hold the tenant for another year or sue him for use and occupation. The law of waste in the United States is more indulgent to the tenant than in England, particularly with regard to long term leases. In the law of eviction American courts have carried to great extremes a doctrine of "constructive eviction" which was first developed in New York state. Thus if the landlord or someone for whom he is responsible commits some act which does not amount to physical eviction but does interfere with the beneficial enjoyment of the premises, the tenant may vacate them within a reasonable time and is released from liability under the lease. Many statutes in the United States allow a tenant to terminate his lease when the premises are destroyed without his fault. The right of distress has also been abolished by statute in some states. In others it has been abrogated by judicial decision. In still others it has been superseded by the process of attachment on mesne process.

The lease is a form of legal transaction that is particularly useful in certain phases of free capitalistic development, in which it is an important factor in increasing production. Under these circumstances the tenant may even be in a position that is socially and economically superior to that of the landlord. Ordinarily, however, the opposite is the case. The relation of landlord and tenant then becomes a major cause of social friction and at times has stimulated movements of protest and rebellion. The law may favor the tenant in the absence of express agreement; but since a lease is primarily the result of bargaining between landlord and tenant, the former of whom has always been in a much stronger bargaining position, the result has generally been unfavorable to the latter. The tendency of leases in a given community to assume a standardized form determined by custom has reenforced the landlord's position. Since the law did not undertake to limit rentals, the tenant was economically in the landlord's power.

The increase of pressure of population on land and building in large cities has given rise in recent decades to new social and economic problems. During the World War, when construction activities for dwelling purposes came to a sudden halt in all belligerent countries, these problems came to the fore. Under the wartime system of economy and government it was fairly simple as well as politically essential for warring governments to resort to legislative or administrative means to limit landlords' freedom in dictating terms of dwelling leases and to relieve the distress of tenants who could not meet their obligations. This was accomplished by regulating rentals and limiting the landlords' powers of eviction. Not a few of the war measures were incorporated in permanent statutes. In some large cities, especially in England and the United States, the landlord-tenant relation is in a state of flux, and legislatures have under consideration further statutory modifications of old relations to meet new problems.

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See: POSSESSION; OWNERSHIP; LAND TENURE; RENT REGULATION; STATUTE OF FRAUDS; FARM TENANCY.

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LANE, WILLIAM (1861–1917), Australian socialist. Lane was born in England; in 1875 he emigrated to Canada, where he practised journalism until he emigrated to Australia in 1885. He edited a weekly, the *Boomerang*, much read by miners and bush workers, and published several socialist and single tax pamphlets. In 1890 he established the *Queensland Worker*, the first general newspaper supported by trade union subsidies and hence independent of advertisers. Lane wished to unite trade unionists into a disciplined federation for political and industrial action and in 1889 he established the Australian Federation of Labour, whose general socialist aims took practical shape in reformism. He helped raise £30,423 in Australia for the 1890 London dockers' strike and was active in organizing unsuccessful maritime and pastoral strikes of 1890–91. Despairing of achieving "socialism in our time" through conflict within a capitalist form of society, he turned to utopianism on lines much like those of Hertzka. Obtaining a free grant of 450,000 acres from the government of Paraguay and having collected £30,000, he projected a society based on communal ownership and in 1893 set out with 240 picked socialist settlers to found "New Australia." Later 260 other settlers followed. Want of foresight and discipline, ignorance of pioneering and Lane's autocratic administration seem to have undermined the venture, which failed completely. After another trial at Cosme, in 1899 Lane abandoned his plan. In 1913 he returned to journalism as editor of the New Zealand *Herald*. Toward the end of his life his views became increasingly patriotic and conservative. His plan of financing labor papers, since widely followed, and his effort to federate separated labor units are more important than his adventure into utopianism. But the latter has made him a romantic figure—the nearest approach to a Marx or a Lenin in this regard that Australian labor has known.

G. V. PORTUS

Consult: Grahame, Stewart (Graeme Williams), *Where Socialism Failed* (New York 1912).

LANESSAN, JEAN MARIE ANTOINE DE (1843–1919), French colonial administrator. A naturalist and a physician, de Lanessan directed the *Revue internationale des sciences biologiques* from 1878 to 1883. As a member of the Chamber of Deputies from 1881 to 1891 he was sent on several economic missions to the colonies. His success led to his appointment as governor general of Indo-China, in which post from 1891 to 1894 he did his most important work. He again sat in the Chamber from 1898 to 1906 and from 1910 to 1914 and was minister of the Navy from 1899 to 1902.

De Lanessan first organized the central government of Indo-China and laid the foundations for the principal political and financial reforms later carried out by Paul Doumer. He put a stop to the raids of Siamese pirates on the Laotian

provinces of the emperor of Annam and the king of Cambodia, who were under French protection. He contributed greatly to the penetration and pacification of the interior, encouraging the important scientific expeditions of Pavie into regions until then unknown to Europeans. De Lanessan defined and applied to native affairs the policy of biracial cooperation, displacing the theory of assimilation then current. He held it unwise for the small minority of French colonists to try to destroy the native ruling class or to burden the country with two complete administrative systems and advocated instead that the French protectorate employ the mandarins to rule the natives by their traditional systems. His principles of colonial administration, expounded in three books, influenced the colonial doctrines of Marshal Lyautey, who served with him in Indo-China, and have become an important part of the theory of present French colonial administration.

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LANFRANC (d. 1089), archbishop of Canterbury. Lanfranc was born early in the eleventh century at Pavia. In his youth he devoted himself to juristic studies at a time when the law schools of northern Italy were emerging into prominence as centers of the legal renaissance. At Pavia, where both Lombard and Roman law were studied, he was renowned as a legal teacher. Leaving Italy for Normandy he became about 1039 master of the cathedral school at Avranches. About 1042 he entered the recently founded monastery at Bec and there opened a school which his teaching in theology and law soon made famous. At the same time he began to be an active political force. A few months before the Conquest of England in 1066, William, duke of Normandy, appointed him first abbot of St. Stephen's at Caen. Four years after the Conquest he became archbishop of Canterbury, an office which according to tradition made him the king's chief minister of state. At times during William's absence he also served as royal vice regent. During the last two years of his life, which coincided with the first two years of the reign of William Rufus, his efforts in the interest of just and stable government were very effectual in counteracting the worst tendencies of that monarch.

Lanfranc's influence upon the conqueror from 1066 on was perhaps the most important factor in the establishment of Norman rule in England. Both the creation of a strong kingship in England and the achievement of a harmonious relationship between church and state were in large measure Lanfranc's work. His mastery of civil and canon law, his familiarity with the law of Lombardy and the facility with which he acquired a knowledge of the Norman and English legal systems are reflected in some of the conqueror's most important policies, including the retention, with Norman modifications, of Anglo-Saxon law, which historically was closely related to Lombard law, and the preparation of the *Domesday Book* as well as the reorganization of the church. Lanfranc's ecclesiastical policy was directed primarily toward the liberation of the church from the fetters of secular interest and state expediency which had characterized the Anglo-Saxon theocracy. He therefore obtained William's permission to deal with church affairs in synods composed exclusively of ecclesiastics; and without doubt it was he who moved William to separate ecclesiastical from lay jurisdiction. Even in such matters, however, Lanfranc tried to harmonize ecclesiastical and political considerations, as in his acknowledgment of the king's right to veto the legislation of synods. Again, although he evidently favored, as did the school at Bec, the doctrine of papal sovereignty, he nevertheless helped the king to maintain the independence of the English church.

The favorable decision of the Council of Winchester in 1072 enabled Lanfranc to preserve the sovereignty of Canterbury over York and thus to prevent a threatened division of the English church. Although the documents upon which the council chiefly based its decision were forged and were undoubtedly prepared at Canterbury, recent research has proved that Lanfranc was not their author and may not have been even privy to them.

Until the middle of the twelfth century the collection of canon law which Lanfranc brought from Bec and which included the famous false decretals—then universally believed genuine—remained not only the authoritative but apparently the sole collection in use in the English church. Lanfranc therefore played a preeminent role in the development of canon law in England.

As Brooke has recently shown, however, in the very act of introducing continental canon law he unconsciously prepared the way for a later "revolt against that system of Church government which he and his royal master had instituted and maintained."

Lanfranc ranks as one of the most eminent teachers of his age. As primate he furthered monasticism, raised the standard of clerical education and discipline and in general introduced ecclesiastical reforms in the true spirit of the Hildebrandine policy. Both by native ability and by special training he was a lawyer, in fact one of the most distinguished lawyers of his time. Within this field he had full opportunity to display his remarkable gifts not only as a royal justiciar in the hearing of causes but chiefly as a statesman in the service of the crown. Much of the constitutional and legal history of England in the early Norman period will be forever associated with his name.

H. D. HAZELTINE

Works: *Opera . . . omnia*, ed. by J. A. Giles, 2 vols. (Oxford 1844); *Monumenta gregoriana*, ed. by P. Jaffé, Bibliotheca Rerum Germanicum, vol. ix (Berlin 1865), containing correspondence between Lanfranc and Gregory VII.

Consult: Macdonald, A. J., *Lanfranc* (Oxford 1926); Brooke, Z. N., *The English Church and the Papacy from the Conquest to the Reign of John* (Cambridge, Eng. 1931) p. 57–83, 117–31; Boehmer, Heinrich, *Kirche und Staat in England und in der Normandie* (Leipsic 1899) p. 79–126; *Regesta regum anglo-normannorum, 1066–1154*, ed. by H. W. C. Davis and R. J. Whitwell (Oxford 1913); Davis, H. W. C., *England under the Normans and Angevins, 1066–1272* (9th ed. London 1928); Haskins, C. H., *Norman Institutions*, Harvard Historical Studies, vol. xxiv (Cambridge, Mass. 1918) p. 30, 32, and 57; Pollock, F., and Maitland, F. W., *History of English Law before the Time of Edward I*, 2 vols. (2nd ed. Cambridge, Eng. 1898) vol. i; Holdsworth, W. S., *A History of English Law*, 9 vols. (3rd ed. London 1922–26) vol. ii.

LANG, ANDREW (1844–1912), English anthropologist and folklorist. Although more of a humanist than a man of science, Lang ranks high among the pioneers of anthropology. Like Frazer he was a classical scholar, with two first classes and a fellowship at Oxford to assure him an academic career had he desired it. Instead he chose journalism and the life of a literary free lance; and with amazing versatility he wrote poetry and prose, serious studies and light essays in profusion. In his study of primitive culture his first chief concern was to find a key to classical origins. Coming from St. Andrews to Balliol during the year in which both McLennan's *Primitive Marriage* (Edinburgh 1865) and Tylor's *Researches into the Early History of Mankind* (London 1865) appeared, he envisaged civilization as an evolved savagery and from that point of view undertook to combat the current fashion inaugurated by the philologists of treating myth as a "disease of language," an abuse of cosmological metaphor. He became famous at the age of forty with his article "Mythology" (*Encyclopaedia Britannica*, 9th ed. vol. xvii, 1884, p. 135–58), which compared with Max Müller's paper "Comparative Mythology" (*Oxford Essays*, 4 vols., London 1855–58, vol. ii, ch. i) illustrates how completely he turned the tables in favor of the anthropologists (see also his *Modern Mythology: a Reply to Professor Max Müller*, London 1897). In that year he also published *Custom and Myth* (London 1884, new ed. 1904), a collection of essays light in tone but erudite. His *Myth, Ritual and Religion* (London 1887, new ed. 1899), with the possible exception of W. Robertson Smith's *Lectures on the Religion of the Semites* (Edinburgh 1889), may be considered the most important contribution to anthropology in England in the two decades that intervene between Tylor's *Primitive Culture* (2 vols., London 1871) and Frazer's *The Golden Bough* (2 vols., London 1890). Lang who was an original member of the Folk-lore Society, founded in 1878, was at the same time issuing innumerable publications relating to folk tales, folk songs and the Homeric cycle of poems. During this earlier period although Lang always worked in a single handed and detached way he was one of the leading defenders of Tylor's anthropological views. When he published *The Making of Religion* (London 1898, 2nd ed. 1900), however, he broke with anthropologists who believed in the animistic theory of the evolution of religion. He contended that the theory overlooked two sets of facts, the evidence favoring the genuineness of psychical phenomena and the evidence tending to show that there is a primitive theism of an ethical character which did not originate in any form of animistic belief. Henceforth Lang was suspect in the eyes of the experts. His subsequent works, *Social Origins* (London 1903), which incorporated some original suggestions of his cousin, J. J. Atkinson, and *The Secret of the Totem* (London 1905), both of which dealt with the important subjects of exogamy and totemism, were largely ignored by his contemporaries. Throughout his life and especially toward the end of it Lang was a brilliant critic who vindicated his intrepid intel-

lectual independence even at the cost of a certain isolation.

R. R. MARETT

Consult: Rait, R. S., Reinach, Salomon, Murray, Gilbert, and Millar, J. H., in *Quarterly Review*, vol. ccxviii (1913) 299–329; Clodd, Edward, Marett, R. R., von Gennep, A., Rivers, W. H. R., and Schmidt, Wilhelm, in *Folk-lore*, vol. xxiii (1912) 358–75; Jacobs, J., "Andrew Lang as Man of Letters and Folk-lorist" in *Journal of American Folk-lore*, vol. xxvi (1913) 367–72; Saintsbury, George, "Andrew Lang in the 'Seventies—and After" in *The Eighteen Seventies*, ed. by Harley Granville-Barker (Cambridge, Eng. 1929) p. 80–95.

LÁNG, BARON LAJOS (1849–1918), Hungarian statistician, economist and statesman. Láng was professor of statistics at the University of Budapest. From 1889 to 1893 he was state secretary of finance and from 1902 to 1903 minister of commerce. In his economic views as laid down in his *A közgardaság elmélete* (Theory of economics, Budapest 1882) and *A vámpolitika az utolsó száz évben* (Budapest 1904; tr. into German by A. Rosen as *Hundert Jahre Zollpolitik*, Vienna 1905) he followed the traditional method of classical analysis. He displayed more originality in his *A statisztika története* (History of statistics, Budapest 1913), which traces the development of statistics from its beginnings to the World War. It presents a clear exposition of Malthus' doctrines in which the geometric ratio of population growth and the arithmetic ratio of increase in the food supply are assigned only an illustrative value, and "moral restraint" is interpreted as abstention from marriage by persons unable to support a family rather than as any form of control in married life. Criticizing Quételet's attempt to extend the laws of the physical universe to society, which must always be viewed as composed of mass collectives, Láng regarded as Quételet's greatest contribution the introduction of mathematical methods into statistics and its transformation into a science of averages.

Láng also attracted attention with his *Javaslat a quota megallapitására* (Proposal for determining the quota, Budapest 1897), in which he attempted to provide an objective basis for the determination of Hungary's share in financing the joint governmental functions, such as war and the diplomatic service, of Austria-Hungary. He thus hoped to avoid the frequent outbursts of political strife which marked the periodical equalization conferences between the two constituents of the empire. As a statesman Láng had ample opportunity to apply his economic views to contemporary economic policy and he became one of the most outstanding spokesmen of economic liberalism in Hungary.

FRÉDÉRIC DE FELLNER

Consult: Concha, Győző, in Royal Hungarian Academy, *Akadémiai értesitö* (May 1918); Fellner, Frigyes, in *Közgazdasági szemle* (Economic review), vol. xlii (1918); Vargha; Jules de, in Institut International de Statistique, *Bulletin*, vol. xxi (1924) pt. i, p. 341–45, with bibliography.

LANGDELL, CHRISTOPHER COLUMBUS (1826–1906), American jurist. Langdell was Dane professor of law at Harvard from 1870 to 1900; dean of the faculty of law from 1870 to 1895; editor of a series of casebooks on property, personal property, equity pleading and equity jurisdiction; and author of several works: *A Brief Survey of Equity Jurisdiction* (Cambridge, Mass. 1905; 2nd ed. 1908), *A Summary of the Law of Contracts* (appeared first as part of vol. ii of 2nd ed. of *A Selection of Cases on the Law of Contracts*, 2 vols., Boston 1879; separate publication Boston 1880) and *A Summary of Equity Pleading* (Cambridge, Mass. 1877; 2nd ed. 1883). His fame rests primarily upon his introduction of the so-called case system of studying law. The theory which led Langdell to regard this system as a "truly scientific" way of studying law was stated by him as follows: "Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer" (Preface to *A Selection of Cases on the Law of Contracts*). In taking this view Langdell naturally followed the ideas of scientific method then prevalent: ideas which seem to many present day students to oversimplify the problem of the formulation and application of "principles" in any field of thought. The *Summary of Equity Pleading* is the only one of Langdell's treatises which really covers its subject. Written in a vigorous and terse style it contains an illuminating historical and analytical study of the fundamental ideas underlying the system of pleading in equity. Especially important are the demonstration of the derivation of the system from that which prevailed in the ecclesiastical courts and the comparison of common law pleading with equity pleading. In all his writings Langdell emphasized as fundamental that "equity acts *in personam*" and not "*in rem*." This theory or at least the most usual interpretation of it was not very realistic. It has

been described as a "palpable sophism" (Phelps, C. E., *Falstaff and Equity*, Boston 1901, p. 46).

WALTER WHEELER COOK

Consult: *Harvard Law Review*, vol. xx (1906–07) 1–13; Ames, J. B., in *Great American Lawyers*, 8 vols. (Philadelphia 1907–09) vol. viii, p. 465–89; Eliot, Charles W., "Langdell and the Law School" in *Harvard Law Review*, vol. xxxiii (1919–20) 518–25.

LANGE, CARL GEORG (1834–1900), Danish neurologist. Lange, who was professor of pathological anatomy at the University of Copenhagen from 1877 until his death, is best known for his contribution in 1885 to the theory that emotions are the result of sensations arising from organic responses. William James had expressed similar views in 1884 and the theory, which became known as the James-Lange theory of emotions, had great influence on contemporary and later psychology. Lange developed his ideas on a narrower basis than did James; he ascribed emotions to disturbances in the circulatory system alone, declaring that if the vasomotor system were not excited one would wander through life unsympathetic and passionless, experiencing neither joy nor anger, care nor fear. Since wine, mushrooms, hashish, opium, cold baths and other agencies cause physiological effects which are accompanied by altered states of feeling and since removal of the physical manifestations of fear removes fear itself, he drew the conclusion that emotion is only a perception of bodily changes. Evidence has been urged against the James-Lange theory that the exclusion of vasomotor control of the blood vessels either by the severance of the spinal cord or by the removal of the sympathetic system leaves animals acting as emotionally as before except for the participation of denervated organs, and that human beings with injuries or diseases which separate the vasomotor system from the brain testify to no alteration of their emotional tone. Nevertheless, the theory still has vigorous defenders.

W. B. CANNON

Important works: *Om sindsbevaegelser* (Copenhagen 1885), tr. from German ed. in *The Emotions*, ed. by K. Dunlap (Baltimore 1922); *Bidrag til nydelsernes fysiologi, som grundlag for en rationel æstetik* (A contribution to the physiology of pleasure as a basis for rational aesthetics) (Copenhagen 1899).

Consult: Petersen, O., in *Biographisches Lexikon der hervorragenden Ärzte*, vol. iii (2nd ed. Berlin 1931) p. 666.

LANGE, FRIEDRICH ALBERT (1828–75), German philosopher and social reformer. Lange was born near Solingen. His father, a Protestant clergyman of proletarian origin, became a professor at Zurich, where Lange absorbed the democratic, republican spirit of Swiss political thought. After teaching in *Gymnasien* and at the University of Bonn he abandoned academic work because of political difficulties and became secretary of the Duisburg Chamber of Commerce and an editor of the *Rhein- und Ruhr-Zeitung*. Forced to resign from these posts, again for political reasons, for nine months he published his own newspaper, the *Bote vom Niederrhein*. To escape political persecution for ideas expressed in his books he returned to Switzerland. In 1870 he became professor of philosophy and literature in Zurich and in 1873 returned to Germany as professor of philosophy at Marburg.

Lange is an excellent representative of the intellectual in the labor movement. At first an adherent of the Progressive party, which was strongly opposed to the Prussian government, his interest in workers and peasants brought him into conflict with its purely bourgeois policy. He was one of the first to support the labor movement led by Bebel and was particularly successful at the Leipsic labor congress of 1864 in allaying its conflict with the Lassallean current. He was a socialist in so far as he studied social development from the standpoint of workers' interests and saw true emancipation as dependent on the establishment of a new, cooperative social order. Lange's view of social laws, which was connected with his essentially biological point of view, was cramped by his failure to recognize the importance of the class struggle in social development. For this reason he was criticized by Marx and came into conflict with the rapidly developing labor movement, both the Lassallean and Bebelian wings of which were leaning increasingly toward the position of the class struggle. Although to his regret his book on the labor question made a greater impression outside labor circles than within them it had great historical significance as the first work by a bourgeois academician which recognized the workers' special claims and considered social developments from the point of view of their satisfaction.

Today Lange is remembered more as a philosopher than as a social thinker. His history of materialism, which dominated philosophic thought for several decades, is still useful both for its demonstration of the philosophic limitations of metaphysical materialism and for its appreciation of the value of materialism as a stimulus to critical thinking. The weakness of

the work, again deriving from Lange's biological point of view, is its failure to recognize the importance of the Kantian critique of knowledge and the new forms of historical and dialectical materialism. The book's enormous circulation was partly responsible for the spread of the interpretation of Kantian philosophy as a dualism which views knowledge as the outcome of intellectual activity and an external object.

MAX ADLER

Chief works: *Die Arbeiterfrage* (Duisburg 1865; rev. ed. by A. Grabowsky, Leipsic 1910); *J. S. Mill's Ansichten über die sociale Frage, und die angebliche Umwälzung der Socialwissenschaft durch Carey* (Duisburg 1866); *Geschichte des Materialismus und Kritik seiner Bedeutung in der Gegenwart* (Iserlohn 1866; new ed. by H. Schmidt, 2 vols., Leipsic 1926), tr. by E. C. Thomas, 3 vols. (3rd ed. London 1890; reprinted with introduction by Bertrand Russell, 1 vol., Edinburgh 1925).

Consult: Ellissen, O. A., *Friedrich Albert Lange* (Leipsic 1891); Bebel, August, *Aus meinem Leben*, 3 vols. (Stuttgart 1910–14) vol. i, p. 97–100, partially tr. as *My Life* (Chicago 1912) p. 65–66; Mehring, Franz, "Aus der Fruhzeit der deutschen Arbeiterbewegung" in *Archiv für die Geschichte des Sozialismus und der Arbeiterbewegung*, vol. i (1911) 101–33, and his introduction to Grabowsky's edition of *Die Arbeiterfrage* (Leipsic 1910) p. 9–13; Cohen, Hermann, Introduction and critical appendix to his edition of Lange's *Geschichte des Materialismus . . .*, 2 vols. (Leipsic 1902) vol. i, p. v–xiii, 435–535; Berdiajew, Nikolai, "Friedrich Albert Lange und die kritische Philosophie in ihren Beziehungen zum Sozialismus" in *Neue Zeit*, vol. xviii, pt. ii (1900) 132–40, 164–74, 196–207; Reichesberg, Naum, *Friedrich Albert Lange als Nationalökonom*, Berner Beiträge zur Geschichte der National-Ökonomie, no. 4 (Berne 1892).

LANGE, HELENE (1848–1930), German feminist. Her native independence and courage brought Helene Lange early recognition in liberal circles in Berlin, where she became principal of a girls' school in 1876. In 1887 she attracted nation wide attention with her pamphlet on girls' high schools, in which she attacked the educational ideals of the finishing school and maintained the right of women to an education for their own sake. The pamphlet accompanied a petition to the Prussian Diet calling for women's fuller participation in the instruction of girls and for state training of women for teaching. The Diet took no action. Two years later, however, courses were privately formed to supplement the inadequate instruction in the girls' high schools, and these *Realkurse* were put into the hands of Helene Lange. She transformed them in 1893 into a sort of university preparatory school, thereby offering an opportunity for girls to qualify for higher education and thus accomplishing an important step toward opening the universities to women students. Meanwhile in 1890 she had founded the Allgemeine Deutsche Lehrerinnenverein, an association for women teachers, which under her guidance soon developed into one of the most powerful of the feminist organizations. She was a member of the board and a leader in the Allgemeine Deutsche Frauenverein, Germany's pioneer feminist society, and in the Federation of Women's Associations, the Bund Deutscher Frauenvereine. In 1919–20 she served on the city council of Hamburg. In the main, however, she exerted her influence through her teachers' association and through her writings. *Frau*, the most generally representative German feminist magazine, was founded by her in 1893 and continued under her editorship until her death. Her articles here as well as her other publications are characterized by perspicacity and a certain racy directness of approach coupled with a liberal understanding of human nature. Throughout her entire career she battled against superficiality, especially in women's training for life.

HUGH WILEY PUCKETT

Important works: *Die höhere Mädchenschule und ihre Bestimmung* (Berlin 1887); *Handbuch der Frauenbewegung*, ed. in collaboration with Gertrud Bäumer, 5 vols. (Berlin 1901–06); *Die Frauenbewegung in ihren modernen Problemen* (Berlin 1908, 3rd ed. Leipsic 1924); *Lebenserinnerungen* (Berlin 1921).

Consult: Bäumer, Gertrud, *Helene Lange zu ihrem 70. Geburtstage* (2nd ed. Berlin 1918), and *Studien über Frauen* (3rd ed. Berlin 1924); "Zum Gedächtnis von Helene Lange" in *Frau*, vol. xxxvii (1929–30) no. 9; Puckett, H. W., *Germany's Women Go Forward* (New York 1930) ch. viii.

LANGLAND, WILLIAM (1332?–99), English poet. Langland was the probable author of *Piers Plowman*. About 1355 he drifted to London, where as a clerk in lower orders he lived on from hand to mouth for the rest of his life. The three versions of *Piers Plowman*, each fuller than its predecessor, may be dated fairly exactly: 1362 or 1363; 1377; 1398 or 1399. The hero of the poem undertakes to answer difficulties which the official church cannot solve. The world is governed by "Lady Meed"—i.e. unlawful gain; most men take no heed for the future so long as they can enjoy the present. The church is indeed indispensable, yet she is deeply corrupted. Pilgrims flock to hundreds of shrines, yet none of them has ever heard of "Saint Truth." Piers comes forward and offers himself as guide, but his

gospel proves too simple for the hierarchy to trouble about: "At the Last Day, the real deciding factor will be the sort of life that a man has led." The poem drifts through long discussions on all the problems of the day—capital and labor, free will and determinism and so on—but the author can only cast side lights; he cannot ultimately decide. The last three cantos are focused upon the sacrifice and resurrection of Jesus Christ, symbolizing love, which to Langland offers a practical solution for all difficulties. In conclusion he describes the gradual decay of the church, with the consequent necessity for conscience to abandon whatever seems untenable in religious institutionalism and to wander forth to life's end in search of the Christ that is to be.

Piers Plowman contains the fullest treatment of social life of that or any neighboring century. By education Langland could understand the rich; his life's experience gave him sympathy with the poor; and his poem pictures the life of all classes. It deals directly with the problems and aims and difficulties of "the man in the street," and no one else in the entire Middle Ages has treated so fully and sympathetically the life of the peasantry, who formed at least 90 percent of the population. Langland was ahead of his times in his political and religious views. His latent radicalism, his spirit of inquiry, his uncertain groping toward some solution for the ills of society, mark him as important in the transition from the mediaeval to the modern mind.

G. G. COULTON

Works: *The Vision of William concerning Piers the Plowman . . . together with Richard the Redeless*, ed. by W. W. Skeat, 2 vols. (Oxford 1886); a good modern version is that by Arthur Burrell, *Piers Plowman, a Version for the Modern Reader*, Everyman's Library (London 1912).

Consult: Manly, J. M., Jusserand, J. J., and Chambers, R. W., *The Piers Plowman Controversy*, Early English Text Society, vol. cxxxix, b, c, d, e (London 1910); Bright, A. H., *New Light on Piers Plowman* (Oxford 1928); Coulton, G. G., *The Medieval Scene* (Cambridge, Eng. 1930) p. 157–63; Hittmair, Rudolf, "Der Begriff der Arbeit bei Langland" in *Neusprachliche Studien, Festgabe Karl Luick*, Neuere Sprachen, supplementary no. vi (Marburg 1925); Chadwick, D., *Social Life in the Days of Piers Plowman* (Cambridge, Eng. 1922).

LANGLOIS, CHARLES VICTOR (1863–1929), French historian. As professor of history at the Sorbonne and later as director of the Archives Nationales of France Langlois was the outstanding exponent in France of scientific method in historiography. At the same time he contributed penetrating studies on the history of institutions and of French civilization and society from the end of the twelfth to the middle of the fourteenth century, concentrating on the age of St. Louis and his immediate successors. His doctoral thesis, *Le règne de Philippe III, le Hardi* (Paris 1887), was followed by researches on the administrative system of the Capetians during the thirteenth century and at the beginning of the fourteenth, particularly on the Parlement of Paris, financial administration, the royal commissioners and the royal chancellery. His own monographs—notably *De monumentis ad priorem curiae regis judiciariae historiam pertinentibus* (Paris 1887), *Textes relatifs à l'histoire du parlement depuis les origines jusqu'en 1314* (Paris 1888), "Les origines du parlement de Paris" (in *Revue historique*, vol. xlii, 1890, p. 74–114), *Registres perdus des archives de la chambre des comptes de Paris* (Paris 1916)—which are a partial embodiment of the results of his researches in this field, were supplemented by numerous other studies carried out under his supervision by his students. In the realm of social history his outstanding monographs based on archive material are "Doléances recueillis par les enquêteurs de Saint Louis et des derniers Capétiens directs" and "Les doléances des communautés du Toulousain" (in *Revue historique*, vol. xcii, 1906, p. 1–41, vol. xcv, 1907, p. 21–53 and vol. c, 1909, p. 63–95). The results of another and more important series of studies in this field, based on mediaeval literary remains, appeared in three volumes (Paris 1903–11) and were later reissued with an additional volume as *La vie en France au moyen âge, de la fin du XII^e^ au milieu du XIV^e^ siècle* (Paris 1924–28). Langlois' volume *Saint Louis, Philippe le Bel, les derniers Capétiens directs* (Paris 1901) in the *Histoire de France*, edited by Ernest Lavisse, is an attempt to present to a large public the results of his exhaustive research. From his voluminous contributions on the intellectual and moral history of the Middle Ages and on problems of education a limited collection has been made in *Questions d'histoire et d'enseignement* (2 vols., Paris 1902–06).

LOUIS HALPHEN

Other important works: *Les archives de l'histoire de France*, in collaboration with H. Stein, 2 vols. (Paris 1891–92); *Manuel de bibliographie historique*, 2 vols. (Paris 1891–1904; vol. i, 2nd ed. 1901); *Introduction aux études historiques*, in collaboration with C. Seignobos (Paris 1898), tr. by G. G. Bery (London 1898).

Consult: Fawtier, R., in *English Historical Review*, vol. xlv (1930) 85–91.

LANGUAGE. The gift of speech and a well ordered language are characteristic of every known group of human beings. No tribe has ever been found which is without language and all statements to the contrary may be dismissed as mere folklore. There seems to be no warrant whatever for the statement which is sometimes made that there are certain peoples whose vocabulary is so limited that they cannot get on without the supplementary use of gesture, so that intelligible communication between members of such a group becomes impossible in the dark. The truth of the matter is that language is an essentially perfect means of expression and communication among every known people. Of all aspects of culture it is a fair guess that language was the first to receive a highly developed form and that its essential perfection is a prerequisite to the development of culture as a whole.

There are some general characteristics which apply to all languages, living or extinct, written or unwritten. In the first place language is primarily a system of phonetic symbols for the expression of communicable thought and feeling. In other words, the symbols of language are differentiated products of the vocal behavior which is associated with the larynx of the higher mammals. As a mere matter of theory it is conceivable that something like a linguistic structure could have been evolved out of gesture or other forms of bodily behavior. The fact that at an advanced stage in the history of the human race writing emerged in close imitation of the patterns of spoken language proves that language as a purely instrumental and logical device is not dependent on the use of articulate sounds. Nevertheless, the actual history of man and a wealth of anthropological evidence indicate with overwhelming certainty that phonetic language takes precedence over all other kinds of communicative symbolism, which are by comparison either substitutive, like writing, or merely supplementary, like the gesture accompanying speech. The speech apparatus which is used in the articulation of language is the same for all known peoples. It consists of the larynx, with its delicately adjustable glottal chords, the nose, the tongue, the hard and soft palate, the teeth and the lips. While the original impulses leading to speech may be thought of as localized in the larynx, the finer phonetic articulations are due chiefly to the muscular activity of the tongue, an organ whose primary function has of course nothing whatever to do with sound production but which in actual speech behavior is indispensable for the development of emotionally expressive sound into what we call language. It is so indispensable in fact that one of the most common terms for language or speech is "tongue." Language is thus not a simple biological function even as regards the simple matter of sound production, for primary laryngeal patterns of behavior have had to be completely overhauled by the interference of lingual, labial and nasal modifications before a "speech organ" was ready for work. Perhaps it is because this speech organ is a diffused and secondary network of physiological activities which do not correspond to the primary functions of the organs involved that language has been enabled to free itself from direct bodily expressiveness.

Not only are all languages phonetic in character; they are also "phonemic." Between the articulation of the voice into the phonetic sequence, which is immediately audible as a mere sensation, and the complicated patterning of phonetic sequences into such symbolically significant entities as words, phrases and sentences there is a very interesting process of phonetic selection and generalization which is easily overlooked but which is crucial for the development of the specifically symbolic aspect of language. Language is not merely articulated sound; its significant structure is dependent upon the unconscious selection of a fixed number of "phonetic stations," or sound units. These are in actual behavior individually modifiable; but the essential point is that through the unconscious selection of sounds as phonemes definite psychological barriers are erected between various phonetic stations, so that speech ceases to be an expressive flow of sound and becomes a symbolic composition with limited materials or units. The analogy with musical theory seems quite fair. Even the most resplendent and dynamic symphony is built up of tangibly distinct musical entities or notes which in the physical world flow into each other in an indefinite continuum but which in the world of aesthetic composition and appreciation are definitely bounded off against each other, so that they may enter into an intricate mathematics of significant relationships. The phonemes of a language are in principle a distinct system peculiar to the given language, and its words must be made up, in unconscious theory if not always in actualized behavior, of these phonemes. Languages differ very widely in their phonemic structure. But whatever the details of these structures may be,

the important fact remains that there is no known language which has not a perfectly definite phonemic system. The difference between a sound and a phoneme can be illustrated by a simple example in English. If the word matter is pronounced in a slovenly fashion, as in the phrase "What's the matter?" the *t* sound, not being pronounced with the full energy required to bring out its proper physical characteristics, tends to slip into a *d*. Nevertheless, this phonetic *d* will not be felt as a functional *d* but as a variety of *t* of a particular type of expressiveness. Obviously the functional relation between the proper *t* sound of such a word as matter and its *d* variant is quite other than the relation of the *t* of such a word as town and the *d* of down. In every known language it is possible to distinguish merely phonetic variations, whether expressive or not, from symbolically functional ones of a phonemic order.

In all known languages phonemes are built up into distinct and arbitrary sequences which are at once recognized by the speakers as meaningful symbols of reference. In English, for instance, the sequence *g* plus *o* in the word go is an unanalyzable unit and the meaning attaching to the symbol cannot be derived by relating to each other values which might be imputed to the *g* and to the *o* independently. In other words, while the mechanical functional units of language are phonemes, the true units of language as symbolism are conventional groupings of such phonemes. The size of these units and the laws of their mechanical structure vary widely in the different languages and their limiting conditions may be said to constitute the phonemic mechanics, or phonology, of a particular language. But the fundamental theory of sound symbolism remains the same everywhere. The formal behavior of the irreducible symbol also varies within wide limits in the languages of the world. Such a unit may be either a complete word, as in the English example already given, or a significant element, like the suffix *ness* of goodness. Between the meaningful and unanalyzable word or word element and the integrated meaning of continuous discourse lies the whole complicated field of the formal procedures which are intuitively employed by the speakers of a language in order to build up aesthetically and functionally satisfying symbol sequences out of the theoretically isolable units. These procedures constitute grammar, which may be defined as the sum total of formal economies intuitively recognized by the speakers of a language. There seem to be no types of cultural patterns which vary more surprisingly and with a greater exuberance of detail than the morphologies of the known languages. In spite of endless differences of detail, however, it may justly be said that all grammars have the same degree of fixity. One language may be more complex or difficult grammatically than another, but there is no meaning whatever in the statement which is sometimes made that one language is more grammatical, or form bound, than another. Our rationalizations of the structure of our own language lead to a self-consciousness of speech and of academic discipline which are of course interesting psychological and social phenomena in themselves but have very little to do with the question of form in language.

Besides these general formal characteristics language has certain psychological qualities which make it peculiarly important for the student of social science. In the first place, language is felt to be a perfect symbolic system, in a perfectly homogeneous medium, for the handling of all references and meanings that a given culture is capable of, whether these be in the form of actual communications or in that of such ideal substitutes of communication as thinking. The content of every culture is expressible in its language and there are no linguistic materials whether as to content or form which are not felt to symbolize actual meanings, whatever may be the attitude of those who belong to other cultures. New cultural experiences frequently make it necessary to enlarge the resources of a language, but such enlargement is never an arbitrary addition to the materials and forms already present; it is merely a further application of principles already in use and in many cases little more than a metaphorical extension of old terms and meanings. It is highly important to realize that once the form of a language is established it can discover meanings for its speakers which are not simply traceable to the given quality of experience itself but must be explained to a large extent as the projection of potential meanings into the raw material of experience. If a man who has never seen more than a single elephant in the course of his life nevertheless speaks without the slightest hesitation of ten elephants or a million elephants or a herd of elephants or of elephants walking two by two or three by three or of generations of elephants, it is obvious that language has the power to analyze experience into theoretically dissociable elements and to create that world of the potential intergrading

with the actual which enables human beings to transcend the immediately given in their individual experiences and to join in a larger common understanding. This common understanding constitutes culture, which cannot be adequately defined by a description of those more colorful patterns of behavior in society which lie open to observation. Language is heuristic, not merely in the simple sense which this example suggests but in the much more far reaching sense that its forms predetermine for us certain modes of observation and interpretation. This means of course that as our scientific experience grows we must learn to fight the implications of language. "The grass waves in the wind" is shown by its linguistic form to be a member of the same relational class of experiences as "The man works in the house." As an interim solution of the problem of expressing the experience referred to in this sentence it is clear that the language has proved useful, for it has made significant use of certain symbols of conceptual relation, such as agency and location. If we feel the sentence to be poetic or metaphorical, it is largely because other more complex types of experience with their appropriate symbolisms of reference enable us to reinterpret the situation and to say, for instance, "The grass is waved by the wind" or "The wind causes the grass to wave." The point is that no matter how sophisticated our modes of interpretation become, we never really get beyond the projection and continuous transfer of relations suggested by the forms of our speech. After all, to say that "Friction causes such and such a result" is not very different from saying that "The grass waves in the wind." Language is at one and the same time helping and retarding us in our exploration of experience, and the details of these processes of help and hindrance are deposited in the subtler meanings of different cultures.

A further psychological characteristic of language is the fact that while it may be looked upon as a symbolic system which reports or refers to or otherwise substitutes for direct experience, it does not as a matter of actual behavior stand apart from or run parallel to direct experience but completely interpenetrates with it. This is indicated by the widespread feeling, particularly among primitive people, of that virtual identity or close correspondence of word and thing which leads to the magic of spells. On our own level it is generally difficult to make a complete divorce between objective reality and our linguistic symbols of reference to it; and things, qualities and events are on the whole felt to be what they are called. For the normal person every experience, real or potential, is saturated with verbalism. This explains why so many lovers of nature, for instance, do not feel that they are truly in touch with it until they have mastered the names of a great many flowers and trees, as though the primary world of reality were a verbal one and as though one could not get close to nature unless one first mastered the terminology which somehow magically expresses it. It is this constant interplay between language and experience which removes language from the cold status of such purely and simply symbolic systems as mathematical symbolism or flag signaling. This interpenetration is not only an intimate associative fact; it is also a contextual one. It is important to realize that language may not only refer to experience or even mold, interpret and discover experience but that it also substitutes for it in the sense that in those sequences of interpersonal behavior which form the greater part of our daily lives speech and action supplement each other and do each other's work in a web of unbroken pattern. If one says to me "Lend me a dollar," I may hand over the money without a word or I may give it with an accompanying "Here it is" or I may say "I haven't got it. I'll give it to you tomorrow." Each of these responses is structurally equivalent, if one thinks of the larger behavior pattern. It is clear that if language is in its analyzed form a symbolic system of reference it is far from being merely that if we consider the psychological part that it plays in continuous behavior. The reason for this almost unique position of intimacy which language holds among all known symbolisms is probably the fact that it is learned in the earliest years of childhood.

It is because it is learned early and piecemeal, in constant association with the color and the requirements of actual contexts, that language in spite of its quasi-mathematical form is rarely a purely referential organization. It tends to be so only in scientific discourse, and even there it may be seriously doubted whether the ideal of pure reference is ever attained by language. Ordinary speech is directly expressive and the purely formal patterns of sounds, words, grammatical forms, phrases and sentences are always to be thought of as compounded with intended or unintended symbolisms of expression, if they are to be understood fully from the standpoint of behavior. The choice of words in a particular context may convey the opposite of what they

mean on the surface. The same external message is differently interpreted according to whether the speaker has this or that psychological status in his personal relations, or whether such primary expressions as those of affection or anger or fear may inform the spoken words with a significance which completely transcends their normal value. On the whole, however, there is no danger that the expressive character of language will be overlooked. It is too obvious a fact to call for much emphasis. What is often overlooked and is, as a matter of fact, not altogether easy to understand is that the quasi-mathematical patterns, as we have called them, of the grammarian's language, unreal as these are in a contextual sense, have nevertheless a tremendous intuitional vitality; and that these patterns, never divorced in experience from the expressive ones, are nevertheless easily separated from them by the normal individual. The fact that almost any word or phrase can be made to take on an infinite variety of meanings seems to indicate that in all language behavior there are intertwined in enormously complex patterns isolable patterns of two distinct orders. These may be roughly defined as patterns of reference and patterns of expression.

That language is a perfect symbolism of experience, that in the actual contexts of behavior it cannot be divorced from action and that it is the carrier of an infinitely nuanced expressiveness are universally valid psychological facts. There is a fourth general psychological peculiarity which applies more particularly to the languages of sophisticated peoples. This is the fact that the referential form systems which are actualized in language behavior do not need speech in its literal sense in order to preserve their substantial integrity. The history of writing is in essence the long attempt to develop an independent symbolism on the basis of graphic representation, followed by the slow and begrudging realization that spoken language is a more powerful symbolism than any graphic one can possibly be and that true progress in the art of writing lay in the virtual abandonment of the principle with which it originally started. Effective systems of writing, whether alphabetic or not, are more or less exact transfers of speech. The original language system may maintain itself in other and remoter transfers, one of the best examples of these being the Morse telegraph code. It is a very interesting fact that the principle of linguistic transfer is not entirely absent even among the unlettered peoples of the world. Some at least of the drum signal and horn signal systems of the west African natives are in principle transfers of the organizations of speech, often in minute phonetic detail.

Many attempts have been made to unravel the origin of language but most of these are hardly more than exercises of the speculative imagination. Linguists as a whole have lost interest in the problem and this for two reasons. In the first place, it has come to be realized that there exist no truly primitive languages in a psychological sense, that modern researches in archaeology have indefinitely extended the time of man's cultural past and that it is therefore vain to go much beyond the perspective opened up by the study of actual languages. In the second place, our knowledge of psychology, particularly of the symbolic processes in general, is not felt to be sound enough or far reaching enough to help materially with the problem of the emergence of speech. It is probable that the origin of language is not a problem that can be solved out of the resources of linguistics alone but that it is essentially a particular case of a much wider problem of the genesis of symbolic behavior and of the specialization of such behavior in the laryngeal region, which may be presumed to have had only expressive functions to begin with. Perhaps a close study of the behavior of very young children under controlled conditions may provide some valuable hints, but it seems dangerous to reason from such experiments to the behavior of precultural man. It is more likely that the kinds of studies which are now in progress of the behavior of the higher apes will help supply some idea of the genesis of speech.

The most popular earlier theories were the interjectional and onomatopoetic theories. The former derived speech from involuntary cries of an expressive nature, while the latter maintained that the words of actual language are conventionalized forms of imitation of the sounds of nature. Both of these theories suffer from two fatal defects. While it is true that both interjectional and onomatopoetic elements are found in most languages, they are always relatively unimportant and tend to contrast somewhat with the more normal materials of language. The very fact that they are constantly being formed anew seems to indicate that they belong rather to the directly expressive layer of speech which intercrosses with the main level of referential symbolism. The second difficulty is even more serious. The essential problem of the origin of

speech is not to attempt to discover the kinds of vocal elements which constitute the historical nucleus of language. It is rather to point out how vocal articulations of any sort could become dissociated from their original expressive value. About all that can be said at present is that while speech as a finished organization is a distinctly human achievement, its roots probably lie in the power of the higher apes to solve specific problems by abstracting general forms or schemata from the details of given situations; that the habit of interpreting certain selected elements in a situation as signs of a desired total one gradually led in early man to a dim feeling for symbolism; and that in the long run and for reasons which can hardly be guessed at the elements of experience which were most often interpreted in a symbolic sense came to be the largely useless or supplementary vocal behavior that must have often attended significant action. According to this point of view language is not so much directly developed out of vocal expression as it is an actualization in terms of vocal expression of the tendency to master reality, not by direct and ad hoc handling of its elements but by the reduction of experience to familiar forms. Vocal expression is only superficially the same as language. The tendency to derive speech from emotional expression has not led to anything tangible in the way of scientific theory and the attempt must now be made to see in language the slowly evolved product of a peculiar technique or tendency which may be called the symbolic one, and to see the relatively meaningless or incomplete part as a sign of the whole. Language then is what it is essentially not because of its admirable expressive power but in spite of it. Speech as behavior is a wonderfully complex blend of two pattern systems, the symbolic and the expressive, neither of which could have developed to its present perfection without the interference of the other.

It is difficult to see adequately the functions of language, because it is so deeply rooted in the whole of human behavior that it may be suspected that there is little in the functional side of our conscious behavior in which language does not play its part. The primary function of language is generally said to be communication. There can be no quarrel with this so long as it is distinctly understood that there may be effective communication without overt speech and that language is highly relevant to situations which are not obviously of a communicative sort. To say that thought, which is hardly possible in any sustained sense without the symbolic organization brought by language, is that form of communication in which the speaker and the person addressed are identified in one person is not far from begging the question. The autistic speech of children seems to show that the purely communicative aspect of language has been exaggerated. It is best to admit that language is primarily a vocal actualization of the tendency to see reality symbolically, that it is precisely this quality which renders it a fit instrument for communication and that it is in the actual give and take of social intercourse that it has been complicated and refined into the form in which it is known today. Besides the very general function which language fulfils in the spheres of thought, communication and expression which are implicit in its very nature there may be pointed out a number of special derivatives of these which are of particular interest to students of society.

Language is a great force of socialization, probably the greatest that exists. By this is meant not merely the obvious fact that significant social intercourse is hardly possible without language but that the mere fact of a common speech serves as a peculiarly potent symbol of the social solidarity of those who speak the language. The psychological significance of this goes far beyond the association of particular languages with nationalities, political entities or smaller local groups. In between the recognized dialect or language as a whole and the individualized speech of a given individual lies a kind of linguistic unit which is not often discussed by the linguist but which is of the greatest importance to social psychology. This is the subform of a language which is current among a group of people who are held together by ties of common interest. Such a group may be a family, the undergraduates of a college, a labor union, the underworld in a large city, the members of a club, a group of four or five friends who hold together through life in spite of differences of professional interest, and untold thousands of other kinds of groups. Each of these tends to develop peculiarities of speech which have the symbolic function of somehow distinguishing the group from the larger group into which its members might be too completely absorbed. The complete absence of linguistic indices of such small groups is obscurely felt as a defect or sign of emotional poverty. Within the confines of a particular family, for instance, the name Georgy, having once been mispronounced

Doody in childhood, may take on the latter form forever after; and this unofficial pronunciation of a familiar name as applied to a particular person becomes a very important symbol indeed of the solidarity of a particular family and of the continuance of the sentiment that keeps its members together. A stranger cannot lightly take on the privilege of saying Doody if the members of the family feel that he is not entitled to go beyond the degree of familiarity symbolized by the use of Georgy or George. Again, no one is entitled to say "trig" or "math" who has not gone through certain familiar and painful experiences as a high school or undergraduate student. The use of such words at once declares the speaker a member of an unorganized but psychologically real group. A self-made mathematician has hardly the right to use the word "math" in referring to his own interests because the student overtones of the word do not properly apply to him. The extraordinary importance of minute linguistic differences for the symbolization of psychologically real as contrasted with politically or sociologically official groups is intuitively felt by most people. "He talks like us" is equivalent to saying "He is one of us."

There is another important sense in which language is a socializer beyond its literal use as a means of communication. This is in the establishment of rapport between the members of a physical group, such as a house party. It is not what is said that matters so much as that something is said. Particularly where cultural understandings of an intimate sort are somewhat lacking among the members of a physical group it is felt to be important that the lack be made good by a constant supply of small talk. This caressing or reassuring quality of speech in general, even where no one has anything of moment to communicate, reminds us how much more language is than a mere technique of communication. Nothing better shows how completely the life of man as an animal made over by culture is dominated by the verbal substitutes for the physical world.

The use of language in cultural accumulation and historical transmission is obvious and important. This applies not only to sophisticated levels but to primitive ones as well. A great deal of the cultural stock in trade of a primitive society is presented in a more or less well defined linguistic form. Proverbs, medicine formulae, standardized prayers, folk tales, standardized speeches, song texts, genealogies, are some of the more overt forms which language takes as a culture preserving instrument. The pragmatic ideal of education, which aims to reduce the influence of standardized lore to a minimum and to get the individual to educate himself through as direct a contact as possible with the facts of his environment, is certainly not realized among the primitives, who are often as word bound as the humanistic tradition itself. Few cultures perhaps have gone to the length of the classical Chinese culture or of rabbinical Jewish culture in making the word do duty for the thing or the personal experience as the ultimate unit of reality. Modern civilization as a whole, with its schools, its libraries and its endless stores of knowledge, opinion and sentiment stored up in verbalized form, would be unthinkable without language made eternal as document. On the whole, we probably tend to exaggerate the differences between "high" and "low" cultures or saturated and emergent cultures in the matter of traditionally conserved verbal authority. The enormous differences that seem to exist are rather differences in the outward form and content of the cultures themselves than in the psychological relation which obtains between the individual and his culture.

In spite of the fact that language acts as a socializing and uniformizing force it is at the same time the most potent single known factor for the growth of individuality. The fundamental quality of one's voice, the phonetic patterns of speech, the speed and relative smoothness of articulation, the length and build of the sentences, the character and range of the vocabulary, the stylistic consistency of the words used, the readiness with which words respond to the requirements of the social environment, in particular the suitability of one's language to the language habits of the person addressed—all these are so many complex indicators of the personality. "Actions speak louder than words" may be an excellent maxim from the pragmatic point of view but betrays little insight into the nature of speech. The language habits of people are by no means irrelevant as unconscious indicators of the more important traits of their personalities, and the folk is psychologically wiser than the adage in paying a great deal of attention willingly or not to the psychological significance of a man's language. The normal person is never convinced by the mere content of speech but is very sensitive to many of the implications of language behavior, however feebly (if at all) these may have been consciously analyzed. All

in all, it is not too much to say that one of the really important functions of language is to be constantly declaring to society the psychological place held by all of its members. Besides this more general type of personality expression or fulfilment there is to be kept in mind the important role which language plays as a substitutive means of expression for those individuals who have a greater than normal difficulty in adjusting themselves to the environment in terms of primary action patterns. Even in the most primitive cultures the strategic word is likely to be more powerful than the direct blow. It is unwise to speak too blithely of "mere" words, for to do so may be to imperil the value and perhaps the very existence of civilization and personality.

The languages of the world may be classified either structurally or genetically. An adequate structural analysis is an intricate matter and no classification seems to have been suggested which does justice to the bewildering variety of known forms. It is useful to recognize three distinct criteria of classification: the relative degree of synthesis or elaboration of the words of the language; the degree to which the various parts of a word are welded together; and the extent to which the fundamental relational concepts of the language are directly expressed as such. As regards synthesis languages range all the way from the isolating type, in which the single word is essentially unanalyzable, to the type represented by many American Indian languages, in which the single word is functionally often the equivalent of a sentence with many concrete references that would in most languages require the use of a number of words. Four stages of synthesis may be conveniently recognized; the isolating type, the weakly synthetic type, the fully synthetic type and the polysynthetic type. The classical example of the first type is Chinese, which does not allow the words of the language to be modified by internal changes or the addition of prefixed or suffixed elements to express such concepts as those of number, tense, mode, case relation and the like. This seems to be one of the more uncommon types of language and is best represented by a number of languages in eastern Asia. Besides Chinese itself Siamese, Burmese, modern Tibetan, Annamite and Khmer, or Cambodian, may be given as examples. The older view, which regarded such languages as representing a peculiarly primitive stage in the evolution of language, may now be dismissed as antiquated. All evidence points to the contrary hypothesis that such languages are the logically extreme analytic developments of more synthetic languages which because of processes of phonetic disintegration have had to reexpress by analytical means combinations of ideas originally expressed within the framework of the single word. The weakly synthetic type of language is best represented by the most familiar modern languages of Europe, such as English, French, Spanish, Italian, German, Dutch and Danish. Such languages modify words to some extent but have only a moderate formal elaboration of the word. The plural formations of English and French, for instance, are relatively simple and the tense and modal systems of all the languages of this type tend to use analytic methods as supplementary to the older synthetic one. The third group of languages is represented by such languages as Arabic and earlier Indo-European languages, like Sanskrit, Latin and Greek. These are all languages of great formal complexity, in which classificatory ideas, such as sex gender, number, case relations, tense and mood, are expressed with considerable nicety and in a great variety of ways. Because of the rich formal implications of the single word the sentence tends not to be so highly energized and ordered as in the first mentioned types. Lastly, the polysynthetic languages add to the formal complexity of the treatment of fundamental relational ideas the power to arrange a number of logically distinct, concrete ideas into an ordered whole within the confines of a single word. Eskimo and Algonquin are classical examples of this type.

From the standpoint of the mechanical cohesiveness with which the elements of words are united languages may be conveniently grouped into four types. The first of these, in which there is no such process of combination, is the isolating type already referred to. To the second group of languages belong all those in which the word can be adequately analyzed into a mechanical sum of elements, each of which has its more or less clearly established meaning and each of which is regularly used in all other words into which the associated notion enters. These are the so-called agglutinative languages. The majority of languages seem to use the agglutinative technique, which has the great advantage of combining logical analysis with economy of means. The Altaic languages, of which Turkish is a good example, and the Bantu languages of Africa are agglutinative in form. In the third type, the so-called inflective languages, the degree of union between the radical element or

stem of the word and the modifying prefixes or suffixes is greater than in the agglutinative languages, so that it becomes difficult in many cases to isolate the stem and set it off against the accreted elements. More important than this, however, is the fact that there is less of a one to one correspondence between the linguistic element and the notion referred to than in the agglutinative languages. In Latin, for instance, the notion of plurality is expressed in a great variety of ways which seem to have little phonetic connection with each other. For example, the final vowel or diphthong of *equi* (horses), *dona* (gifts), *mensae* (tables) and the final vowel and consonant of *hostes* (enemies) are functionally equivalent elements the distribution of which is dependent on purely formal and historical factors that have no logical relevance. Furthermore in the verb the notion of plurality is quite differently expressed, as in the last two consonants of *amant* (they love). It used to be fashionable to contrast in a favorable sense the "chemical" qualities of such inflective languages as Latin and Greek with the soberly mechanical quality of such languages as Turkish. But these evaluations may now be dismissed as antiquated and subjective. They were obviously due to the fact that scholars who wrote in English, French and German were not above rationalizing the linguistic structures with which they were most familiar into a position of ideal advantage. As an offshoot of the inflective languages may be considered a fourth group, those in which the processes of welding, due to the operation of complex phonetic laws, have gone so far as to result in the creation of patterns of internal change of the nuclear elements of speech. Such familiar English examples as the words sing, sang, sung, song will serve to give some idea of the nature of these structures, which may be termed symbolistic. The kinds of internal change which may be recognized are changes in vocalic quality, changes in consonants, changes in quantity, various types of reduplication or repetition, changes in stress accent and, as in Chinese and many African languages, changes in pitch. The classical example of this type of language is Arabic, in which as in the other Semitic languages nuclear meanings are expressed by sequences of consonants, which have, however, to be connected by significant vowels whose sequence patterns establish fixed functions independent of the meanings conveyed by the consonantal framework.

Elaboration and technique of word analysis are perhaps of less logical and psychological significance than the selection and treatment of fundamental relational concepts for grammatical treatment. It would be very difficult, however, to devise a satisfactory conceptual classification of languages because of the extraordinary diversity of the concepts and classifications of ideas which are illustrated in linguistic form. In the Indo-European and Semitic languages, for instance, noun classification on the basis of gender is a vital principle of structure; but in most of the other languages of the world this principle is absent, although other methods of noun classification are found. Again, tense or case relations may be formally important in one language, for example, Latin, but of relatively little grammatical importance in another, although the logical references implied by such forms must naturally be taken care of in the economy of the language, as, for instance, by the use of specific words within the framework of the sentence. Perhaps the most fundamental conceptual basis of classification is that of the expression of fundamental syntactic relations as such versus their expression in necessary combination with notions of a concrete order. In Latin, for example, the notion of the subject of a predicate is never purely expressed in a formal sense, because there is no distinctive symbol for this relation. It is impossible to render it without at the same time defining the number and gender of the subject of the sentence. There are languages, however, in which syntactic relations are expressed purely, without admixture of implications of a non-relational sort. We may speak therefore of pure relational languages as contrasted with mixed relational languages. Most of the languages with which we are familiar belong to the latter category. It goes without saying that such a conceptual classification has no direct relation to the other two types of classification which we have mentioned.

The genetic classification of languages is one which attempts to arrange the languages of the world in groups and subgroups in accordance with the main lines of historical connection, which can be worked out on the basis either of documentary evidence or of a careful comparison of the languages studied. Because of the far reaching effect of slow phonetic changes and of other causes languages which were originally nothing but dialects of the same form of speech have diverged so widely that it is not apparent that they are but specialized developments of a single prototype. An enormous amount of work

has been done in the genetic classification and subclassification of the languages of the world, but very many problems still await research and solution. At the present time it is known definitely that there are certain very large linguistic groups, or families, as they are often called, the members of which may, roughly speaking, be looked upon as lineally descended from languages which can be theoretically reconstructed in their main phonetic and structural outlines. It is obvious, however, that languages may so diverge as to leave little trace of their original relationship. It is therefore very dangerous to assume that languages are not at last analysis divergent members of a single genetic group merely because the evidence is negative. The only contrast that is legitimate is between languages known to be historically related and languages not known to be so related. Languages known to be related cannot be legitimately contrasted with languages known not to be related.

Because of the fact that languages have differentiated at different rates and because of the important effects of cultural diffusion, which have brought it about that strategically placed languages, such as Arabic, Latin and English, have spread over large parts of the earth at the expense of others, very varied conditions are found to prevail in regard to the distribution of linguistic families. In Europe, for instance, there are only two linguistic families of importance represented today, the Indo-European languages and the Ugro-Finnic languages, of which Finnish and Hungarian are examples. The Basque dialects of southern France and northern Spain are the survivors of another and apparently isolated group. On the other hand, in aboriginal America the linguistic differentiation is extreme and a surprisingly large number of essentially unrelated linguistic families must be recognized. Some of the families occupy very small areas, while others, such as the Algonquin and the Athabaskan languages of North America, are spread over a large territory. The technique of establishing linguistic families and of working out the precise relationship of the languages included in these families is too difficult to be gone into here. It suffices to say that random word comparisons are of little importance. Experience shows that very precise phonetic relations can be worked out between the languages of a group and that on the whole fundamental morphological features tend to preserve themselves over exceedingly long periods of time. Thus modern Lithuanian is in structure, vocabulary and, to a large extent, even phonemic pattern very much the kind of a language which must be assumed as the prototype for the Indo-European languages as a whole. In spite of the fact that structural classifications are in theory unrelated to genetic ones and in spite of the fact that languages can be shown to have influenced each other, not only in phonetics and vocabulary but also to an appreciable extent in structure, it is not often found that the languages of a genetic group exhibit utterly irreconcilable structures. Thus even English, which is one of the least conservative of Indo-European languages, has many far reaching points of structure in common with as remote a language as Sanskrit in contrast, say, to Basque or Finnish. Again, different as are Assyrian, modern Arabic and the Semitic languages of Abyssinia they exhibit numerous points of resemblance in phonetics, vocabulary and structure which set them off at once from, say, Turkish or the Negro languages of the Nile headwaters.

The complete rationale of linguistic change, involving as it does many of the most complex processes of psychology and sociology, has not yet been satisfactorily worked out, but there are a number of general processes that emerge with sufficient clarity. For practical purposes inherent changes may be distinguished from changes due to contact with other linguistic communities. There can be no hard line of division between these two groups of changes because every individual's language is a distinct psychological entity in itself, so that all inherent changes are likely at last analysis to be peculiarly remote or subtle forms of change due to contact. The distinction, however, has great practical value, all the more so as there is a tendency among anthropologists and sociologists to operate far too hastily with wholesale linguistic changes due to external ethnic and cultural influences. The enormous amount of study that has been lavished on the history of particular languages and groups of languages shows very clearly that the most powerful differentiating factors are not outside influences, as ordinarily understood, but rather the very slow but powerful unconscious changes in certain directions which seem to be implicit in the phonemic systems and morphologies of the languages themselves. These "drifts" are powerfully conditioned by unconscious formal feelings and are made necessary by the inability of human beings to actualize ideal patterns in a permanently set fashion.

Linguistic changes may be analyzed into pho-

netic changes, changes in form and changes in vocabulary. Of these the phonetic changes seem to be the most important and the most removed from direct observation. The factors which lead to these phonetic changes are probably exceedingly complex and no doubt include the operation of obscure symbolisms which define the relation of various age groups to one another. Not all phonetic changes, however, can be explained in terms of social symbolism. It seems that many of them are due to the operation of unconscious economies in actualizing sounds or combinations of sounds. The most impressive thing about internal phonetic change is its high degree of regularity. It is this regularity, whatever its ultimate cause, that is more responsible than any other single factor for the enviable degree of exactness which linguistics has attained as a historical discipline. Changes in grammatical form often follow in the wake of destructive phonetic changes. In many cases it can be seen how irregularities produced by the disintegrating effect of phonetic change are ironed out by the analogical spread of more regular forms. The cumulative effect of these corrective changes is quite sensibly to modify the structure of the language in many details and sometimes even in its fundamental features. Changes in vocabulary are due to a great variety of causes, most of which are of a cultural rather than of a strictly linguistic nature. The too frequent use of a word, for instance, may reduce it to a commonplace term, so that it needs to be replaced by a new word. On the other hand, changes of attitude may make certain words with their traditional overtones of meaning unacceptable to the younger generation, so that they tend to become obsolete. Probably the most important single source of change in vocabulary is the creation of new words on analogies which have spread from a few specific words.

Of the linguistic changes due to the more obvious types of contact the one which seems to have played the most important part in the history of language is the "borrowing" of words across linguistic frontiers. This borrowing naturally goes hand in hand with cultural diffusion. An analysis of the provenience of the words of a given language is frequently an important index of the direction of cultural influence. Our English vocabulary, for instance, is very richly stratified in a cultural sense. The various layers of early Latin, mediaeval French, humanistic Latin and Greek and modern French borrowings constitute a fairly accurate gauge of the time, extent and nature of the various foreign cultural influences which have helped to mold English civilization. The notable lack of German loan words in English until a very recent period, as contrasted with the large number of Italian words which were adopted at the time of the Renaissance and later, is again a historically significant fact. By the diffusion of culturally important words, such as those referring to art, literature, the church, military affairs, sport and business, there have grown up important transnational vocabularies which do something to combat the isolating effect of the large number of languages which are still spoken in the modern world. Such borrowings have taken place in all directions, but the number of truly important source languages is surprisingly small. Among the more important of them are Chinese, which has saturated the vocabularies of Korean, Japanese and Annamite; Sanskrit, whose influence on the cultural vocabulary of central Asia, India and Indo-China has been enormous; Arabic, Greek, Latin and French. English, Spanish and Italian have also been of great importance as agencies of cultural transmission, but their influence seems less far reaching than that of the languages mentioned above. The cultural influence of a language is not always in direct proportion to its intrinsic literary interest or to the cultural place which its speakers have held in the history of the world. For example, while Hebrew is the carrier of a peculiarly significant culture, actually it has not had as important an influence on other languages of Asia as Aramaic, a sister language of the Semitic stock.

The phonetic influence exerted by a foreign language may be very considerable, and there is a great deal of evidence to show that dialectic peculiarities have often originated as a result of the unconscious transfer of phonetic habits from the language in which one was brought up to that which has been adopted later in life. Apart, however, from such complete changes in speech is the remarkable fact that distinctive phonetic features tend to be distributed over wide areas regardless of the vocabularies and structures of the languages involved. One of the most striking examples of this type of distribution is found among the Indian languages of the Pacific coast of California, Oregon, Washington, British Columbia and southern Alaska. Here are a large number of absolutely distinct languages, belonging to a number of genetically unrelated stocks, so far as we are able to tell, which nevertheless have many important and distinctive

phonetic features in common. An analogous fact is the distribution of certain peculiar phonetic features in both the Slavic languages and the Ugro-Finnic languages, which are unrelated to them. Such processes of phonetic diffusion must be due to the influence exerted by bilingual speakers, who act as unconscious agents for the spread of phonetic habits over wide areas. Primitive man is not isolated, and bilingualism is probably as important a factor in the contact of primitive groups as it is on more sophisticated levels.

Opinions differ as to the importance of the purely morphological influence exerted by one language on another in contrast with the more external types of phonetic and lexical influence. Undoubtedly such influences must be taken into account, but so far they have not been shown to operate on any great scale. In spite of the centuries of contact, for instance, between Semitic and Indo-European languages we know of no language which is definitely a blend of the structures of these two stocks. Similarly, while Japanese is flooded with Chinese loan words, there seems to be no structural influence of the latter on the former. A type of influence which is neither one of vocabulary nor of linguistic form, in the ordinary sense of the word, and to which insufficient attention has so far been called, is that of meaning pattern. It is a remarkable fact of modern European culture, for instance, that while the actual terms used for certain ideas vary enormously from language to language, the range of significance of these equivalent terms tends to be very similar, so that to a large extent the vocabulary of one language tends to be a psychological and cultural translation of the vocabulary of another. A simple example of this sort would be the translation of such terms as Your Excellency to equivalent but etymologically unrelated terms in Russian. Another instance of this kind would be the interesting parallelism in nomenclature between the kinship terms of affinity in English, French and German. Such terms as *mother-in-law*, *belle-mère* and *Schwiegermutter* are not, strictly speaking, equivalent either as to etymology or literal meaning but they are patterned in exactly the same manner. Thus *mother-in-law* and *father-in-law* are parallel in nomenclature to *belle-mère* and *beau-père* and to *Schwiegermutter* and *Schwiegervater*. These terms clearly illustrate the diffusion of a lexical pattern which in turn probably expresses a growing feeling of the sentimental equivalence of blood relatives and relatives by marriage.

The importance of language as a whole for the definition, expression and transmission of culture is undoubted. The relevance of linguistic details, in both content and form, for the profounder understanding of culture is also clear. It does not follow, however, that there is a simple correspondence between the form of a language and the form of the culture of those who speak it. The tendency to see linguistic categories as directly expressive of overt cultural outlines, which seems to have come into fashion among certain sociologists and anthropologists, should be resisted as in no way warranted by the actual facts. There is no general correlation between cultural type and linguistic structure. So far as can be seen, isolating or agglutinative or inflective types of speech are possible on any level of civilization. Nor does the presence or absence of grammatical gender, for example, seem to have any relevance for the understanding of the social organization or religion or folklore of the associated peoples. If there were any such parallelism as has sometimes been maintained, it would be quite impossible to understand the rapidity with which culture diffuses in spite of profound linguistic differences between the borrowing and giving communities. The cultural significance of linguistic form, in other words, lies on a much more submerged level than on the overt one of definite cultural pattern. It is only very rarely, as a matter of fact, that it can be pointed out how a cultural trait has had some influence on the fundamental structure of a language. To a certain extent this lack of correspondence may be due to the fact that linguistic changes do not proceed at the same rate as most cultural changes, which are on the whole far more rapid. Short of yielding to another language which takes its place, linguistic organization, largely because it is unconscious, tends to maintain itself indefinitely and does not allow its fundamental formal categories to be seriously influenced by changing cultural needs. If the forms of culture and language were then in complete correspondence with one another, the nature of the processes making for linguistic and cultural changes respectively would soon bring about a lack of necessary correspondence. This is exactly what is found to be the case. Logically it is indefensible that the masculine, feminine and neuter genders of German and Russian should be allowed to continue their sway in the modern world; but any intellectualist attempt to weed out these unnecessary genders would obviously be fruitless, for the

normal speaker does not actually feel the clash which the logician requires.

It is another matter when we pass from general form to the detailed content of a language. Vocabulary is a very sensitive index of the culture of a people and changes of meaning, loss of old words, the creation and borrowing of new ones are all dependent on the history of culture itself. Languages differ widely in the nature of their vocabularies. Distinctions which seem inevitable to us may be utterly ignored in languages which reflect an entirely different type of culture, while these in turn insist on distinctions which are all but unintelligible to us. Such differences of vocabulary go far beyond the names of cultural objects, such as arrow point, coat of armor or gunboat. They apply just as well to the mental world. It would be difficult in some languages, for instance, to express the distinction which we feel between "to kill" and "to murder" for the simple reason that the underlying legal philosophy which determines our use of these words does not seem natural to all societies. Abstract terms, which are so necessary to our thinking, may be infrequent in a language whose speakers formulate their behavior on more pragmatic lines. On the other hand, the question of the presence or absence of abstract nouns may be bound up with the fundamental form of the language; and there exist a large number of primitive languages whose structure allows of the very ready creation and use of abstract nouns of quality or action.

There are many language patterns of a special sort which are of interest to the social scientist. One of these is the tendency to create tabus for certain words or names. A very widespread custom among primitive peoples, for instance, is the tabu which is placed not only on the use of the name of a person recently deceased but of any word that is etymologically connected in the feeling of the speakers with such a name. This means that ideas have often to be expressed by circumlocutions or that terms must be borrowed from neighboring dialects. Sometimes certain names or words are too holy to be pronounced except under very special conditions, and curious patterns of behavior develop which are designed to prevent one from making use of such interdicted terms. An example of this is the Jewish custom of pronouncing the Hebrew name for God, not as Yahwe or Jehovah but as Adonai, My Lord. Such customs seem strange to us but equally strange to many primitive communities would be our extraordinary reluctance to pronounce obscene words under normal social conditions. Another class of special linguistic phenomena is the use of esoteric language devices, such as passwords or technical terminologies for ceremonial attitudes or practises. Among the Eskimo, for example, the medicine man has a peculiar vocabulary which is not understood by those who are not members of his guild. Special dialectic forms or otherwise peculiar linguistic patterns are common among primitive peoples for the texts of songs. Sometimes, as in Melanesia, such song texts are due to the influence of neighboring dialects. This is strangely analogous to the practise among ourselves of singing songs in Italian, French or German rather than in English, and it is likely that the historical processes which have led to the parallel custom are of a similar nature. Thieves' jargons and secret languages of children may also be mentioned. These lead over into special sign and gesture languages, many of which are based directly on spoken or written speech; they seem to exist on many levels of culture. The sign language of the Plains Indians of North America arose in response to the need for some medium of communication between tribes speaking mutually unintelligible languages. Within the Christian church may be noted the elaboration of gesture languages by orders of monks vowed to silence. Not only a language or a terminology but the mere external form in which it is written may become important as a symbol of sentimental or social distinction. Thus Croatian and Serbian are essentially the same language but they are presented in very different outward forms, the former being written in Latin characters, the latter in the Cyrillic character of the Greek Orthodox church. This external difference, associated with a difference of religion, has of course the important function of preventing people who speak closely related languages or dialects but who wish for reasons of sentiment not to confound themselves in a larger unity from becoming too keenly aware of how much they actually resemble each other.

The relation of language to nationalism and internationalism presents a number of interesting sociological problems. Anthropology makes a rigid distinction between ethnic units based on race, on culture and on language. It points out that these do not need to coincide in the least—that they do not, as a matter of fact, often coincide in reality. But with the increased emphasis on nationalism in modern times the question of the symbolic meaning of race and lan-

guage has taken on a new significance and, whatever the scientist may say, the layman is ever inclined to see culture, language and race as but different facets of a single social unity, which he tends in turn to identify with such a political entity as England or France or Germany. To point out, as the anthropologist easily can, that cultural distributions and nationalities override language and race groups does not end the matter for the sociologist, because he feels that the concept of nation or nationality must be integrally imaged by the non-analytical person as carrying with it the connotation, real or supposed, of both race and language. From this standpoint it really makes little difference whether history and anthropology support the popular identification of nationality, language and race. The important thing to hold on to is that a particular language tends to become the fitting expression of a self-conscious nationality and that such a group will construct for itself in spite of all that the physical anthropologist can do a race to which is to be attributed the mystic power of creating a language and a culture as twin expressions of its psychic peculiarities.

So far as language and race are concerned, it is true that the major races of man have tended in the past to be set off against each other by important differences of language. There is less point to this, however, than might be imagined, because the linguistic differentiations within any given race are just as far reaching as those which can be pointed out across racial lines, yet they do not at all correspond to subracial units. Even the major races are not always clearly sundered by language. This is notably the case with the Malayo-Polynesian languages, which are spoken by peoples as racially distinct as the Malays, the Polynesians and the Negroes of Melanesia. Not one of the great languages of modern man follows racial lines. French, for example, is spoken by a highly mixed population, which is largely Nordic in the north, Alpine in the center and Mediterranean in the south, each of these subraces being liberally represented in the rest of Europe.

While language differences have always been important symbols of cultural difference, it is only in comparatively recent times, with the exaggerated development of the ideal of the sovereign nation and with the resulting eagerness to discover linguistic symbols for this ideal of sovereignty, that language differences have taken on an implication of antagonism. In ancient Rome and all through mediaeval Europe there were plenty of cultural differences running side by side with linguistic ones, and the political status of Roman citizen or the fact of adherence to the Roman Catholic church was of vastly greater significance as a symbol of the individual's place in the world than the language or dialect which he happened to speak. It is probably altogether incorrect to maintain that language differences are responsible for national antagonisms. It would seem to be much more reasonable to suppose that a political and national unit, once definitely formed, uses a prevailing language as a symbol of its identity, whence gradually emerges the peculiarly modern feeling that every language should properly be the expression of a distinctive nationality. In earlier times there seems to have been little systematic attempt to impose the language of a conquering people on the subject people, although it happened frequently as a result of the processes implicit in the spread of culture that such a conqueror's language was gradually taken over by the dispossessed population. Witness the spread of the Romance languages and of the modern Arabic dialects. On the other hand, it seems to have happened about as frequently that the conquering group was culturally and linguistically absorbed and that their own language disappeared without necessary danger to their privileged status. Thus foreign dynasties in China have always submitted to the superior culture of the Chinese and have taken on their language. In the same way the Moslem Moguls of India, while true to their religion, which was adopted by millions in northern India, made one of the Hindu vernaculars the basis of the great literary language of Moslem India, Hindustani. Definitely repressive attitudes toward the languages and dialects of subject peoples seem to be distinctive only of European political policy in comparatively recent times. The attempt of czarist Russia to stamp out Polish by forbidding its teaching in the schools and the similarly repressive policy of contemporary Italy in its attempt to wipe out German from the territory recently acquired from Austria are illuminating examples of the heightened emphasis on language as a symbol of political allegiance in the modern world.

To match these repressive measures there is the oft repeated attempt of minority groups to erect their language into the status of a fully accredited medium of cultural and literary expression. Many of these restored or semimanu-

factured languages have come in on the wave of resistance to exterior political or cultural hostility. Such are the Gaelic of Ireland, the Lithuanian of a recently created republic and the Hebrew of the Zionists. In other cases such languages have come in more peacefully because of a sentimental interest in local culture. Such are the modern Provençal of southern France, the Plattdeutsch of northern Germany, Frisian and the Norwegian *landsmaal*. It is doubtful whether these persistent attempts to make true culture languages of local dialects that have long ceased to be of primary literary importance can succeed in the long run. The failure of modern Provençal to hold its own and the very dubious success of Gaelic make it seem probable that following the recent tendency to resurrect minor languages will come a renewed leveling of speech more suitably expressing the internationalism which is slowly emerging.

The logical necessity of an international language in modern times is in strange contrast to the indifference and even opposition with which most people consider its possibility. The attempts so far made to solve this problem, of which Esperanto has probably had the greatest measure of practical success, have not affected more than a very small proportion of the people whose international interests and needs might have led to a desire for a simple and uniform means of international expression, at least for certain purposes. It is in the less important countries of Europe, such as Czechoslovakia, that Esperanto has been moderately successful, and for obvious reasons. The opposition to an international language has little logic or psychology in its favor. The supposed artificiality of such a language as Esperanto or of any of the equivalent languages that have been proposed has been absurdly exaggerated, for in sober truth there is practically nothing in these languages that is not taken from the common stock of words and forms which have gradually developed in Europe. Such an international language could of course have only the status of a secondary form of speech for distinctly limited purposes. Thus considered the learning of a constructed international language offers no further psychological problem than the learning of any other language which is acquired after childhood through the medium of books and with the conscious application of grammatical rules. The lack of interest in the international language problem in spite of the manifest need for one is an excellent example of how little logic or intellectual necessity has to do with the acquirement of language habits. Even the acquiring of the barest smattering of a foreign national language is imaginatively equivalent to some measure of identification with a people or a culture. The purely instrumental value of such knowledge is frequently nil. Any consciously constructed international language has to deal with the great difficulty of not being felt to represent a distinctive people or culture. Hence the learning of it is of very little symbolic significance for the average person, who remains blind to the fact that such a language, easy and regular as it inevitably must be, would solve many of his educational and practical difficulties at a single blow. The future alone will tell whether the logical advantages and theoretical necessity of an international language can overcome the largely symbolic opposition which it has to meet. In any event it is at least conceivable that one of the great national languages of modern times, such as English or Spanish or Russian, may in due course find itself in the position of a de facto international language without any conscious attempt having been made to put it there.

EDWARD SAPIR

See: WRITING; COMMUNICATION; SYMBOLISM; CULTURE; ANTHROPOLOGY; RACE; NATIONALISM; DIALECT; ISOLATION; STANDARDIZATION; CIVILIZATION.

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LAO TZU. *See* TAOISM.

LAPLACE, MARQUIS DE, PIERRE SIMON (1749–1827), French mathematician. Laplace, famous for his nebular hypothesis and for his work in celestial mechanics, was among the first to call attention to the importance of the application of the calculus of probability to the moral sciences and to the study of social facts.

It was Laplace who at the end of the eighteenth century was responsible for giving to the mathematical science of chance the systematic unity which it had hitherto lacked. "On the whole, the Theory of Probability is more indebted to him than to any other mathematician" (Todhunter, p. 464). His great treatise, *La théorie analytique des probabilités* (Paris 1812, 3rd ed. 1820), which is even today the most complete work ever devoted to this branch of science, was the source of all subsequent developments. It united in a single body all the analytical methods which had been put forward since Pascal. Only a mathematician can appreciate the importance and the originality of the calculus of the generative functions which he invented for use in probability, completing and simplifying the algebraic methods elaborated by Euler and Lagrange, Taylor and Moivre. Laplace, however, considered the theory of probability as fundamentally merely "good sense reduced to calculation" and for this reason endeavored to present its principles and applications in a popular manner in his *Essai philosophique sur les probabilités* (5th ed. Paris 1825; tr. by F. W. Truscott and F. L. Emory, New York 1902), published in 1814 as the introduction to the second edition of the *Théorie analytique*. In this treatise he shows that the science of chance, founded on a very abstract philosophy and on the most subtle algebra, ought to be utilized in the future for legislation, economics, politics and the conduct of business; and he therefore studies the bearing of the science of probability on such subjects as the reliability of witnesses, the selections and decisions of assemblies, the judgments of tribunals, mortality tables, average length of life, the proportion of masculine and feminine births, insurance, the profits of gambling establishments and the like. To all such questions one may apply within the limits of observed data the theorems on the "probability of causes," a subject in which Laplace was particularly interested.

The philosophic basis of probability, as expounded in this work and in the *Théorie analytique*, was that probability represented a subjective view of phenomena due to our mixture of ignorance and knowledge. Complete knowledge, Laplace held, would reveal a strict determinism in the universe and would make possible an exact prediction of the future. He did not, however, wait for the enunciation of strict deterministic laws in the social sciences before admitting them to the rank of positive sciences. He held that the method of probability constituted a method of positive knowledge and that in the social sciences as well as in the physical sciences there arise problems that can be approached only by the analysis of chance. Since about 1840 this interpretation of probability has been subject to attack, and a rival theory based on statistical frequency and on the more or less direct acceptance of objective chance has been developed by Cournot, Ellis, Venn and others. The criticism of Laplace's philosophy of probability does not, however, in any way detract from the value of his mathematical analysis or from his vision in applying the method of probability to a host of diverse problems both in the physical and in the social sciences.

MAURICE HALBWACHS

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LAPPO-DANILEVSKY, ALEXANDR SERGEYEVICH (1863–1919), Russian historian. Lappo-Danilevsky was professor at the University of St. Petersburg. He was first interested in archaeology but soon turned his attention to the study of the social development of Russia in the sixteenth and seventeenth centuries. Influenced

by Kluchevsky, he was one of the first to apply the sociological method to the study of Russian history. His principal work is a volume on the organization of direct taxation in the Moscow state in the seventeenth century (University of St. Petersburg, *Zapiski istoriko-filologicheskago fakulteta*, vol. xxiii, 1890), a subject to which he was attracted by the consideration of the role of the government in the integration of Russia during this period. He concluded that the fiscal organization of Muscovy was determined by the ever increasing needs of the militaristic and imperialistic state, which was the principal if not the only factor in shaping the economic and social development of the country. While admitting the existence in Russia of the primitive agrarian commune, which modern scholarship regards as very doubtful, he insisted that it was under fiscal pressure and particularly due to the land tax assessed on the basis of joint responsibility that the communes acquired a fixed structure and became administrative districts. In the course of this study he made for the first time systematic use of many unpublished documents, chief among which were the cadastral registers of the seventeenth century. He failed, however, in his attempt to reconstruct the origins of the Russian fiscal system and of Russian censuses and cadastral registers, because his study did not take sufficient account of the development of the preceding centuries and because he denied a priori any possibility of Byzantine influence. He frequently used his sources without first subjecting them to critical examination and thus committed many errors of interpretation, which are listed in Miliukov's authoritative study *Spornie voprosi v finansovoy istorii moskovskago gosudarstva* (Controversial questions in the financial history of Muscovy, St. Petersburg 1892). Another great work by Lappo-Danilevsky, a study of the process of adscription of peasants to the soil in the sixteenth and seventeenth centuries (Imperial Academy of Sciences, St. Petersburg, *Zapiski po istoriko-filologischeskomu otdeleniu*, vol. v, 1901, p. 51–175), also based on rich and hitherto unused documents, is a confirmation of Kluchevsky's views on the subject, according to which the de facto adscription caused by the inability of the free tenants to discharge their debts to the landlords received legal sanction from the government. In his theoretical work *Metodologiya istorii* (Methodology of history, 2 vols., St. Petersburg 1910–13; new ed. of vol. i, Petrograd 1923) Lappo-Danilevsky developed Rickert's ideas concerning history as "ideography" and endeavored to prove further that it is as exact a discipline as the natural sciences.

PETER BIZILLI

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LARGE NUMBERS, LAW OF. *See* PROBABILITY; STATISTICS.

LARGE SCALE PRODUCTION like most terms used and useful in economic analysis signifies nothing very definite. Neither in extensive scope (field of application) nor in intensive measure (degree of size) is it restricted in use by reference to any conventional standards or limits. The phrase was first employed principally in connection with manufacturing operations to describe loosely the transformation wrought by the abandonment of handicraft methods and the development of the machine technique in the volume of goods passing through a particular process under a common direction or management. But the linking up or integration of numerous successive processes under a single proprietary control and the growth of the variety of products turned out by a single productive organization—changes which, the first always and the second latterly, have frequently accompanied or grown out of the transformation described—are difficult to distinguish from the first sort of transformation in their effects upon the structure of industry, and in practise they have not been sharply excluded from the concept of large scale production. Moreover the increasing scale of organization characteristic of economic effort in so many different fields, where there may or may not be a significant application of the machine technique, is a phenomenon for which the term large scale production seemed sufficiently appropriate, doubtless largely by way of analogy, to justify general adoption. Thus banking, insurance, mining, construction, retail trade and even agriculture in some of its branches may be said to participate in the movement toward large scale production.

In the broad sense in which the phrase is now used it may be taken to signify simply a tendency toward the conduct of economic functions, with particular emphasis on their productive aspects in so far as these may be segregated, in

aggregates or units of organization which are large as compared with previous practise. Correlative to this integrative tendency is an increasing separation both geographically and functionally, first, of the producers and consumers of particular goods and services; secondly, of the various producers cooperating in the production of particular goods and services; and, finally, of the producers (as aggregate groups) of various goods and services. In a word, large scale production although it signifies primarily an increase in productive specialization is inseparably bound up with an increasing range of economic interdependence not only within each specific productive process but also throughout the whole economy or economic structure of a society.

The sources of a socio-economic transformation so complex and so profound are not easy to trace. It will suffice here to call attention to two major lines of interpretation or modes of approach to the problem. Foremost in prestige if not in time or in number of adherents is the group of theories which finds the primal root from which large scale production sprang, and from which its growth is still sustained, in the expanding scope of market relationships; that is, in commercial considerations. Adam Smith gave wide currency to this theory by his cogent demonstration of the thesis that "the division of labor is limited by the extent of the market." The other school of interpretation finds the impetus toward large scale operations in technological factors. Karl Marx gave special prominence to the exigencies of the machine technique in dictating an increasing aggregation of productive resources under unified management, going so far indeed as to postulate the eventual complete absorption of all productive operations in society in a single organization. Those who think with him in this respect—and they are legion, although many are not conscious of his influence—have rested their case more upon the persuasive power of past events (the eighteenth and nineteenth century industrial revolution) and less upon the appeal of a prospective glorious consummation. As they see it, it is the economic advantages in production upon a large scale, permitting a more and more minute division of labor, which impel the growth of business units and the expansion of markets.

According to the first interpretation technological improvements are not excluded from the causal forces, but their chief significance in the promotion of large scale production is in their bearing upon the facility of transportation and communication. At the same time room is reserved for the causal influence of such non-technical institutional factors as the conventional motives of enterprise, the legal policy toward trade, the scope of political organization, the growing density of population, the spread of education and indeed any factors which may affect the feasibility of carrying on regular exchange relationships over wide areas or among numerous persons. On the other hand, according to the second interpretation all such developments spring from and are but a reflection of the inexorable requirements of the machine technology. This is not the place to attempt a resolution of the fundamental issue. It may be observed that in the main the economic historians incline toward the first interpretation, notably Cunningham, Bücher, Schmoller, Sombart and in America N. S. B. Gras, A. P. Usher and V. S. Clark. Difficulties attach to an unqualified acceptance of either interpretation. The Marxian view is confronted at the outset with the indubitable fact that large scale production and a considerable division of labor tasks, although not previously prevalent characteristics, did precede the introduction of either automatic or power driven machinery. In England sporadic and yet far from insignificant experiments in this direction, particularly in the woolen industry, began as early as the middle of the sixteenth century. In France under Colbert there were established in the pottery and decorative fabric industries factories which have continued operations to this day. In America throughout the colonial period and well into the nineteenth century it was the glass industry which afforded perhaps the most conspicuous example of capitalistic organization, large scale employment, division of labor and production for remote markets; yet this was one of the very last fields of manufacture to be invaded by the machine technique, no important mechanical devices having been introduced prior to the twentieth century. Again, in reference to the extension of large scale production into such fields as banking and retail merchandising, the technological interpretation of the development falls somewhat short of conclusiveness. On the other hand, the Smithian view has somehow to contrive an explanation of the fact that power driven machinery was first used in manufactures and had already led to a substantial increase in the scale of productive operations, notably in the cotton textile industry (both in England and

in America) during the early decades of the nineteenth century, prior to the application of the machine technique in transportation or communication.

Those who lay primary emphasis upon the commercial factor also encounter a stumbling block in the case of agriculture. There despite world wide markets for the staple products: wheat, cotton, coffee, tobacco—markets moreover which were among the first to feel the influence of improved transportation—the productive units have remained typically small. There has been no significant change in the average size of farms in the United States, for example, since the Civil War. And although Brazilian coffee plantations and East Indian rubber plantations were for a long time fields for foreign capital investment on a large scale, there is evidence that the average size of holdings has recently diminished in both fields. It may well be that these simple averages obscure significant trends in opposite directions, tending to counterbalance one another; as, for example, the decline in the western part of the United States of the extensive "farms," which were primarily livestock ranches, and the growth in the eastern districts of small truck, poultry and dairy farms as against some increase in the size of cultivated holdings in the "dry farming" and one-crop areas. But the fact remains, as examination of the detailed census data will show, that large scale "corporation" farming has made no appreciable progress in America and that elsewhere agricultural units of similar size have been maintained only by virtue of some special legal circumstance, as of land tenure, colonial policy or "kulak liquidation" measures. Indeed it would appear that large scale production is profitable in agriculture only where there is virgin soil to be exploited, that cropping for the market leads inevitably to overproduction and disorganization and that the most efficient size of agricultural unit may be considerably smaller than is generally realized.

Whatever the causes of the movement toward large scale production, there is general agreement that it has been accompanied by substantial economic advantages, although not without offsetting drawbacks both from the social standpoint and from the standpoint of those who have been primarily involved in the development. The chief advantages from either view may all be subsumed under one heading: a reduction of costs. In economic theory the discussion of the relative costs of large scale production has been closely bound up with the analysis of increasing returns (*q.v.*) and the theory of monopoly (*q.v.*). The classic statement and solution of the problem was that of Alfred Marshall (*Principles of Economics* and *Industry and Trade*). Since the World War theoretic analysis has been increasingly supplemented by statistical study of the relation of size to profits and to stability, while emphasis has shifted from the advantages of large scale production to its limitations.

For the purpose of analyzing the so-called economies of large scale production it is helpful to distinguish three aspects of the movement: large scale output, large scale ownership and large scale control. These three phases of the development may or may not coexist in the growth of any particular productive unit and also may or may not be coeval. It is quite possible to have a substantial enlargement in any one respect without either of the others being affected, although commonly a change in one direction is accompanied by corresponding if not equal change in each of the others. But the influences directly responsible for an enlargement of the productive unit in each of these respects, as well as the immediate consequences of such enlargement, are quite different from those acting upon the others or following from them, and the analysis may therefore proceed seriatim.

Large scale output from a single plant, especially in manufacturing, seems to derive its major advantages from an application in one way or another of the machine technique. By this is understood the technique based upon the complementary principles of specialization and coordination. It involves breaking up a whole productive process into its constituent elements and simultaneously reintegrating them into a thus diversified whole. At every stage the advantages gained from this procedure pertain to the economy resulting from continuous utilization of productive resources of all sorts, including human effort. But if each unit of productive resources engaged, of whatever species, is to be kept continuously functioning, if waste of potential productive time is to be minimized, two things are necessary. In the first place, each productive unit must be confined or reduced to a narrow range of operations functionwise, if not to a single task, in order to avoid the necessity of repeated stopping, shifting and starting with resultant time losses. In the second place, to keep each productive unit fully occupied at

a single operation or at least stage of the productive process necessitates the continuous movement of large masses of materials through a number of these successive specialized operations or stages. And this clearly implies not only a rigorous coordination of the operations in the successive stages of the process but also large scale output.

These advantages and their conditioning factors may be illustrated by the development of the shoe industry in America. In what has been called the home stage of industrial organization, as in pioneer households, where shoes were made by families for their own use from materials they had themselves provided and prepared, the losses—from a strictly cost point of view—in time and in material were bound to be substantial; the unfamiliar tasks of cutting and sewing leather were undertaken only occasionally, by inexpert hands; the appropriate tools, simple though they were, lay idle most of the year; and indeed each particular tool was idle during most of the shoemaking process. Manifestly a real saving resulted from the introduction of a large scale output in the handicraft stage of organization, with the specialization of itinerant shoemakers, or cordwainers, going from home to home to make up a season's supply of footwear for each family from leather provided by the consumer. But the time loss of the artisan in moving from place to place and shifting from task to task was still inordinately large and remained even after the increasing density of population in the eastern sections of the country during the eighteenth century permitted him to settle down to custom work in his own shop.

A still larger scale of output could be achieved, however, and these losses reduced when such operations as measuring, fitting, selection and cutting of the leather, selling and the like could be separated from the actual shoemaking process and given over to other specialized hands. This was what happened with the development of the domestic, or "putting-out," system of industrial organization dominated by the merchant capitalist in the early years of the nineteenth century. Under this system still greater specialization was gradually realized: to a certain proportion of the artisans was assigned the cutting, to another group the sewing of the uppers and to still another the lasting, welting and finishing operations.

But the time losses resulting from distributing and collecting materials among numerous small scale productive units even in a single locality as well as from the imperfect coordination of the speed of the work and the material losses resulting from the want of immediate oversight of the workers led eventually to the introduction of the factory system. This came in America only after the middle of the nineteenth century. It is significant that it followed closely on the invention of the sewing machine. So long as the economies realizable from an output larger in scale than that made possible by the domestic system were confined to the savings in human effort and to the savings in materials expense from a closer supervision of the accuracy and quality of the work and from a reduction of the investment in goods in process per unit of output, the preference of artisans for a self-regulated working day—their reluctance to submit to the rigid discipline of factory employment—might effectually have blocked the efforts of capitalist enterprisers to reduce their costs and increase their volume. But with the prospect of great savings even in the single process of sewing the uppers by machine shoe manufacturers were indisposed to let the prospective gains slip through their fingers as a result of merely partial utilization of the expensive equipment. And whether the equipment was leased to domestic workers or acquired and kept by them in their shops or homes (both arrangements were actually experimented with), the laxity of the discipline and the poor coordination of the work in the various stages of the manufacturing process made the full utilization of the potential productive capacity of the machines impossible. When added to this the advantages of using mechanical power to run the machines and the economy in the generation and transmission of power for multiple units became evident, shoe manufacture by handicraft processes under the domestic system was doomed to a speedy decline.

It is significant that the transformation of shoemaking to a factory industry came only after large sections of the country had been linked together commercially by the steam railroad. Finally, it is significant also in the same connection that the beginning of what is now commonly termed large scale production (or, more accurately, large scale output) awaited the insistent urge supplied by large orders of standardized shoes for prompt delivery occasioned by the Civil War.

The theory underlying the practical development of large scale output may be succinctly stated. Given the demand, if a method of production is to be introduced and to maintain itself

it must be more efficient than the method currently practised. To be more efficient it must yield a higher ratio of output to input; that is, secure a maximum utilization of a minimum of production resources. If it is to secure such utilization it must specialize each unit of every productive resource engaged and assure its continuous functioning in that single operation by keeping it supplied with an uninterrupted flow of "work" (materials and power) through a rigidly disciplined coordination of all phases of the productive process. In a word, efficiency in manufacture requires the machine technique.

This technique may manifest itself in a single manual operation: the time study, instruction cards and work charts of scientific management; in a mechanical device: the frame, gears, levers, cutting tools, jigs of a compound drill, for example, designed by an engineer; in a factory: the segregation of tasks, departmentalization, classical "division of labor," superintended by a works manager; in an industry: the cultivation of wheat, its shipment, its grading and storing, flour milling, bread baking and retail distribution all systematized by market contracts; or in a national economy: specialized industries such as hat making, shoe manufacture, automobile production, coal mining, coordinated through the markets. But on whatever plane it manifests itself, its inevitable accompaniment is standardization. Repetitive operations at every stage and on every plane can proceed without halting, adjustment and resultant waste only to the extent that each succeeding performance of each productive unit is identical with the preceding one. And such uniformity can be achieved only when standardized materials are to be worked up according to standardized specifications. Wherever human judgment intervenes, the machine technique is superseded. Whether from necessity, as in cases where materials are incapable of standardization or processes are dependent upon meteorological conditions, or from choice, as where the tastes of consumers result in a fickle demand, the intervention of judgment spells the interruption of repetition and the limitation of efficiency.

This is not to say that the limitations upon the application of the machine technique and the development of productive efficiency—limitations which restrict the growth of large scale output—are ipso facto uneconomical. Efficiency is a purely technical matter: the ratio of output to input. Economy is a matter of value: the ratio of value realized to value expended, of product to cost. It may very well be therefore that efficiency might be indefinitely improved by the extension of large scale output (application of the machine technique), while economy might be sacrificed (with resultant "waste" although not "loss" of productive factors) by the extension of large scale output beyond a given point in any particular line of production. Such indeed appears to be the actual situation.

The scale of output in any industry which will provide for a comparatively full utilization of each unit of every species of productive agent required depends in the first instance upon the capacity of that unit or complex of units at any stage or operation or in any department having the maximum potential output (analogous inversely to the weakest link in a chain). The productive units in other stages or departments will tend to be enlarged if need be by simple duplication of factors. But the very fact that for different processes or operations in an industry the "size" of the productive units varies means in practise that the facilities cannot be expanded piecemeal. Thus if in process A the output of a single productive unit for a given period be represented by 4 and in process D it be represented by 5, even though in all the remaining processes there might be outputs per unit equivalent to 1 or less, full utilization of all productive factors could not be achieved, obviously, short of a scale of output equivalent to 20 for every process. Substantial discrepancies of this sort between the capacities per productive unit per period in different processes may easily be a contributing if not a decisive factor leading to the separation of those necessitating the largest scale of operation and their organization as a distinct branch of industry.

Concretely, the particular productive processes in which the unit factors for practical reasons have had to be provided in relatively large "chunks" if they were to be provided at all economically appear to have been preeminently power generation and executive management. So long as waterfalls or steam engines were the most economical sources of industrial power, as generally the former were in the first half of the nineteenth century and the latter remained throughout the second half, the advantages in dependability and cost of large sized generating units together with the impracticability of transmitting kinetic energy over any considerable distance placed a heavy premium on large scale output in all the manufacturing processes in which power was required. Like-

wise the capacity of executive management which was adequate for even a small enterprise was adequate also for conducting the operations of a much larger aggregate of "cooperating" productive resources. The capacity here was chiefly a function of aptitude and experience, judgment and knowledge. The importance of this factor of fuller utilization of executive capacity is perhaps most patent in the development of the cotton textile industry in New England, where the names of Lowell, Slater, Sprague, Brown and Knight came to be synonymous with large and expanding operations. But the same factor is also evident in the rise of iron and steel manufacture from local forges and bloomeries to vast, integrated works comprising mining, furnace and rolling mill operations.

While these two types of so-called (but misnamed) fixed costs—productive factors, that is, the capacity of which tended persistently to outrun their effective utilization—have not provided the sole forces making for large scale output, being undoubtedly supplemented in some measure by the pressure of unutilized capacity from other sources, as, for example, in mere fabricating machines, they do appear to have been the most potent forces working in this direction in industry generally, at least throughout the nineteenth century. Whether they may be expected to continue to provide compelling impulsion in this direction is, however, another question. The development of electrical energy as a source of industrial power has brought about such a tremendous increase in the economical size of a power generating unit, especially with the advent of superpower systems, that it has already achieved a substantial divorce of this process from most branches of manufacturing industry. Increasingly industrial power is purchased in the form of electric current supplied from central stations, making possible the achievement of maximum utilization of other productive factors and minimum costs upon a much smaller scale of output in many of these branches of production than was heretofore considered possible. It is not inconceivable therefore on this account alone that the movement toward ever larger scale of output may have been arrested and even reversed. In reference to the "economies" gained from the fuller utilization of the capacities of executive management it may be noted that recent developments tending to segregate technological experimentation in industrial research institutes and in government and endowed scientific laboratories, as well as the growth of independent and governmental statistical services furnishing more comprehensive and authentic trade information than any single productive enterprise whatever its size could hope to assemble, have clearly tended to reduce the "advantage of size."

There must also be noted the somewhat tenuous but none the less important distinction between mass production and large scale production. The latter term applies essentially to scale of organization, even when output and not ownership or control is the center of attention. Mass production, on the other hand, applies to the scale of operation; it usually refers to the production of one product or a very limited number under special conditions, involving the highest degree of standardization and continuous operation. In point of time, mass production has followed upon large scale production, of which indeed it may be considered a special phase. It is to be noted also that while large scale production has in general characterized the recent period of industrial evolution, mass production is and can be characteristic only of certain industries. For the most part and regarding essentials only, these industries appear to be characterized by two distinctive features. In the first place, the materials upon which they operate must be sufficiently homogeneous to be amenable to uniform treatment. Cement manufacture, and indeed most of the so-called "mill" industries, illustrate this feature most clearly; but even in such an industry as slaughtering and meat packing the units of raw material vary only within such limits as permit a standardized, continuous process of preparation. In the second place, and perhaps even more significantly, these mass production industries are dependent upon mass markets. What this means in substance is that the product must be one which, if not a "necessary" according to an old and outmoded economic classification, is salable at a price which brings it within the reach directly, as in the case of meat and even certain types of automobiles, or indirectly, as in the case of cement and tin cans, of a large section of the population. This circumstance makes the industries organized upon a mass production basis peculiarly vulnerable to trade dislocations. For while it is true that the output on a tremendous scale of one standardized product makes possible great reductions in unit cost, the economy, as distinct from the efficiency, of mass production is conditioned by the extent and the permanence of the market. A firm which produces a hand-

some profit when operating at full capacity may lose heavily when operating at 75 per cent or 60 per cent of its capacity. Recent studies seem to confirm the view that it is the mass production industries which tend to be most adversely affected by industrial crises. Indeed since mass production industries are generally dependent not only upon an extensive market but, because of their exceptional attractiveness during periods of prosperity, upon a growing market, it becomes questionable whether the movement of the reorganization of industry upon this basis has not already overreached itself, i.e. carried mass production past the point as well as beyond the field where its advantages outweighed its limitations even from a strictly profit seeking viewpoint.

It is significant that when allowance is made for all the variables affecting basis of enumeration, period of enumeration and the like, the returns of the Census of Manufactures in the United States indicate a distinct slowing down in the rate of growth of the average size of industrial "establishments" since the beginning of the present century. There are several difficulties in the way of statistical measurement of the growth of large scale output. The available measures are the figures in the census returns of most countries as to number of employees, capital investment and volume of output. The difficulty with the first measure is that it neglects entirely the industrial growth accompanying or taking place as a result of the introduction of labor saving devices. The accuracy of the second depends almost exclusively upon the judgment of the person making the return, since records of original investment are seldom complete and still more rarely reliable and even when they are both they are vitiated by secular and cyclical price movements. The difficulty with the third measure, except in the comparatively rare cases in which physical measurement is feasible and such data are recorded, is that it also uses an elastic measuring rod, the monetary unit. Furthermore as an index of changes in the scale of productive operations its dependability is weakened by the circumstance that census returns are taken only intermittently and that successive enumerations do not, save by chance, occur in identical phases of the business cycle. Despite its shortcomings therefore the first measure remains in general the most useful basis for a study of changes in the size of industrial establishments.

Without attempting to reproduce the figures which tell the story of the growth of large scale output the outstanding historical facts may be summarized. The transformation had its inception in manufactures and in transport, was extended slowly in the primary extractive and milling industries—mining, lumbering, fisheries and agriculture—and has affected the organization of the distributive, entertainment and service trades only recently. It was first experienced in Great Britain, where its characteristic features and prevalent range of concentration in different fields were worked out roughly in the first half of the nineteenth century. It wrought a revolution in the industrial organization of America between 1860 and the turn of the century, having a time center of gravity around 1885. In Germany the change came somewhat later and rather more suddenly than in other similarly situated countries, between 1880 and the outbreak of the World War. In France the changes have perhaps been less extensive in scope, less striking in degree and less accelerated in tempo than in any other major industrial country.

It is in the United States that large scale production has developed most spectacularly. Here as elsewhere generally the textile industries were the first to exhibit the trend toward large scale output. In 1859 the average employment per establishment in cotton mills was 112, which indicated a larger average size of plant than was to be found in any other industry. Yet even at that time no mill in the country operated as many as 100,000 spindles, while a half century later the largest mill had 650,000 spindles. The hosiery, silk, carpet, woolen and worsted industries were also well above the general average of size in 1859, with employment per establishment respectively of 46, 39, 31, 33 and for the only three worsted mills enumerated the phenomenal average of 793. There was a steady trend upward in the size of textile mills during the next four decades, although the advance was less marked in the woolen industry and the hosiery trade than in other branches. Woolen mills and knitting mills barely doubled in average size, while carpet mills increased sevenfold, silk mills threefold and cotton mills nearly as much. But the most significant developments in the general movement were the displacement of the textile industries by the metal industries in the front rank of large scale operations and the spread of this type of organization to many other branches of industry. The average number of employees per establishment in iron and steel manufacture increased from 65 in 1859 to 333

in 1899, or more than fivefold. The largest steelworks in the country in 1860, the Great Bend Iron Works on the Allegheny, had four small blast furnaces and represented a total investment of $1,000,000. By 1890 the largest steel plant had fourteen blast furnaces with an overall capacity at least twenty times greater than that of the Great Bend Works in 1860, and the whole plant represented an investment of $25,000,000. Thereafter the growth in size of productive units in this industry was chiefly through horizontal and vertical combination and large scale ownership. In reference to the spread of the large scale output, machine technique, factory system movement in manufacturing generally, the census data are not directly instructive because of a misconceived basis, as well as faulty standards, of enumeration. But after suitable corrections and allowances are made it may be stated conservatively that the census authenticates an estimate of an increase between 1869 and 1899 in the average size of industrial establishments, measured by employees per establishment, of approximately 75 percent. When measured by the value-product per establishment, however, this increase in size amounted to roughly 150 percent, or double that shown by the employment measure. This reveals strikingly the extent of the mechanization tendency accompanying the factory movement. The census clearly indicates moreover that for manufacturing industry as a whole the movement had its most profound and pervasive effects during the two decades from 1870 to 1890 and by the latter date had substantially run its course. In other words, large scale output by the factory system had become characteristic of American industry by 1890, and the widespread consolidation movement of the ensuing decade and the present century did not on the whole vitally affect manufacturing methods or the productive organization of industry. The Census Bureau's special monograph, *The Integration of Industrial Operation*, a painstaking study of the data up to 1920, reached the following conclusion: "That there is, in general, some trend toward larger establishments must be expected, for new industries are growing rapidly which require large establishments for profitable operation, such as automobile, rubber-tire, beet-sugar, and electrical-apparatus enterprises. Since these and other similar industries are expanding at a much more rapid rate than the older industries they naturally tend to raise the general average for industry as a whole; but the census data certainly cannot be used to support the hypothesis that the tendency for industrial establishments since 1900 has been, in general, to increase in size. The rapid concentration, so evident in the nineteenth century, is by no means so marked in the twentieth" (*Census Monograph*, no. 3, 1924, p. 45). This conclusion requires no amendment for extension to the latest available reports of the Census of Manufactures, and it supports fully the judgment previously expressed that the movement toward large scale output in American industry was a phenomenon of the latter part of the nineteenth century.

The question arises as to the extent to which large scale production may be expected to spread to other parts of the world. In agriculture the plantation system gives indication of serious disabilities. Large scale output has thus far gained only a feeble hold in China and India, and the development of electrical power, as well as the tenacity of local habits, may prevent its spread. A recent report by an Italian government committee has stressed the advisability of small scale industry. On the other hand, Soviet Russia is committed to a program of large scale and, wherever possible, mass production, in agriculture as well as in industry. The first Five Year Plan was based upon the development of the heavy industries as a preparation for large scale output in all fields. Not only was no provision made for the continuance of the numerous household-craft and local-shop industries which in prerevolutionary Russia supplied a substantial if not a preponderant part of the output of fabricated commodities, but these forms of production were positively discouraged. There is some indication, however, latterly even in Russia, of a necessary abandonment of the goal of size and a recognition of the need for a certain decentralization of industry. Moreover this is partly on social but mainly on economic grounds.

Large scale ownership is the second phase of large scale production. In a way, it may be considered to have superseded large scale output, although as the growth of chain stores has demonstrated it is not contingent upon what is here denominated the prior phase. But speaking generally it is only after the advantages of large scale output in single plants have approached exhaustion that the combination of numerous more or less identical establishments under a single ownership offers alluring prospects for business enterprise. Theoretically an adequate explanation for this further development in the

hierarchy of "size" might appear to be afforded by the same reasoning as that which applies to the evolution of large scale output. Such an explanation would run in terms chiefly of the opportunity for fuller utilization of administrative capacity: a reduction of the bargaining horse-play per unit of aggregate product which occupies so much of the time of management when the scale of ownership is confined to the size of distinct operating units. Whether this extension of ownership takes the form of a simple aggregation of numerous substantially identical productive units (as, for example, the Woolworth chain stores) or of an integration of numerous productive units operating in successive stages of a single industrial process (such as the Ford organization) or of a vast congeries of productive units operating in a variety of industries (for example, the Stinnes concern and the Kreuger enterprises), there tends in any case to be an economizing of time and effort in the negotiation of contracts, the formulation of policies and the establishment of routine discipline. In short, the work of administration (per unit of product) tends to be minimized.

But the development of large scale ownership brings with it far more than this. It involves the opportunity for better coordination than the market mechanism affords. This is most evident perhaps when the large scale ownership takes the form of integration in the technical sense. It permits of definite planning and adjustment of the operations in each stage to the requirements of prior and succeeding stages. As German writers have been wont to insist, the organization of trusts cannot be ascribed solely to a desire for "control of the market" without taking account of the advantages of "independence of the market." But even in the case of the telephone industry, where essentially there is no question of technical integration, large scale ownership (a proprietary unification of numerous independent operating plants) facilitates a coordination of the services so superior to what might be achieved by the independent ownership and operation of each of the several "plants" as to be practically compulsory. This superior coordination is not simply a matter of standardization of operating equipment and practise, better adjustment of trunk line facilities to requirements and quicker "connections" between stations. It extends even to the planning for future growth of the plants as a whole and to the adjustment of the productive capacity of auxiliary or ancillary industries to their effective demand. These are no less social than private advantages, it should be observed; and in some measure similar factors explain and similar consequences pertain to the organization of large scale proprietary units even in such industries as mercantile trade and banking.

The extension of large scale ownership even more than the growth of large scale output, however, appears to receive a substantial part of its impetus not only from non-technical factors but also from extra-economic factors. In a world in which achievement is measured mainly in pecuniary terms, in which wealth is the key to social esteem and in which business enterprise represents the accredited channel for the exhibition of personal prowess the ownership and (at least nominal) responsibility for the successful operation of a far flung chain of business ventures stamp a man as an "empire builder." There are no bounds to such an ambition. Pride and emulation impel men like Hugo Stinnes, Ivar Kreuger, Lord Melchett, Philip Armour and Henry Ford, not to mention lesser magnates like the Van Sweringens and Clarence Saunders, from one acquisition to another. The corporation device is peculiarly fitted to serve their ends: it permits the unification in their hands of an ever vaster fund of productive property than their own accumulations could generally hope to reach. Yet the corporate fortunes are popularly identified with their fortunes, and so they are spurred on toward an indefinite expansion. It is not surprising therefore that a movement propelled by such forces should so frequently end in disaster. The limits which human capacities set to the effective superintendence and smooth coordination of vast and heterogeneous properties are real and inescapable. Functional specialization of management may go a long way toward providing survival value for concerns as their proprietary interests grow larger and larger, but eventually this very specialization becomes a snare and a delusion. The virtues of size become in the end its worst vices.

Large scale control appears to have grown out of and, in the dynamic aspect of large scale production, to have of late superseded large scale ownership. Indeed the concentration of the discretionary power to determine the vital policies of numerous productive enterprises in the hands of others than their collective owners is clearly predicated upon the growth of the proprietary units to a size greater than that in which it is practicable for all of the "owners"

to participate in the formulation and execution of policies. In short, it is only when by force of circumstances control has been divorced from ownership that it can be effectually concentrated upon a large scale, enabling "size" thus to overreach the order of magnitude to which the exigencies of ownership persuasion and ownership responsibility confine it.

The advantages which furnish the motivation for the development of this species of concentration, for the extension of large scale production from the sphere of big business into the realm of high finance, are very infrequently referred to as "economies." This abandonment of traditional nomenclature doubtless has a sound basis in fact. But its adequate explanation calls also for some recognition of the surreptitious character of this phase of the development of large scale production. In most countries the evolution of industrial concentration upon this plane and in this degree is, at least as yet, without explicit legal sanction. This is not to say that it is regarded as illegal even in countries, like the United States, which remain committed to the policy of fostering rugged independence and forthright competition in trade. Rather the very novelty of the devices for achieving and exercising large scale control tends to stamp the movement with an extralegal character. Its sanctions rest in private interest rather than in settled public policy.

Large scale control appears to have sprung primarily from the quest for power and prestige instead of from the pursuit of either technical economies or commercial advantages. The existence of huge aggregates of capital nominally under a single ownership but actually owned by widely scattered corporate security holders offered a challenge to the will to mastery. The pyramiding of control has been facilitated by the adroit use of such devices as the proxy system, the issuance of non-voting securities and above all the erection of a superstructure of holding companies, in each of which the possession of a small minority of ownership interests is adequate to assure control over subordinate units. This development appears to have been carried further in the United States than in most other industrialized countries and in the United States further in the field of the public utilities than in most other fields of investment. But it is plainly capable of wider application than it has hitherto enjoyed. And the lucrative emoluments attached to the possession of large scale control divorced from proprietary responsibility, such as the generous allowances for underwriting fees and for other financial services—not to mention that still more fruitful source of gain, security speculation backed by deliberate manipulation of accounts—bid fair to foster extensive developments in this direction in the future. This of course presupposes the continuance of the legal status quo ante.

The social and economic consequences of large scale production vary according to the type or phase of the movement considered. In a sense it has justified both the hopes and the fears of those groups of early observers who saw in it either the possibility of emancipation from toil and poverty, the basis of the new socialist state or, on the other hand, the end of all individual sufficiency and social stability and the increasing exploitation of the worker. Perhaps the most distinctive effect of the growth of large scale output is the advance made possible, by increased productivity, in the general standard of living. Probably the most salient outcome of the development of large scale ownership, although it has undoubtedly contributed something to the rise of the plane of living, is the increasing standardization of consumption; while the most significant result of the emergence of large scale control appears to be the deflection of the energies of the boldest and most enterprising elements of the community into sterile if not predatory channels.

Viewed comprehensively and in its larger aspects there seems little reason to doubt that the whole movement toward ever widening interdependence, integration and concentration has brought upon the masses of the people which have come within its ambit a sense of lethargy, of futility, of frustration and a real atrophy of the powers of self-direction and self-expression for which the advance in the material comforts of life affords a poor compensation. Moreover the insecurity which attaches to the claims of the ordinary worker and investor to participation in the usufruct of large scale industry, under the institutional arrangements which still prevail in most western countries despite these revolutionary economic developments, makes it questionable whether even the vaunted offsets to their steady loss of real independence have genuine substance. However this may be, it is certain that the growth of large scale output has tended to submerge the workers, as the advance of large scale ownership has tended to subdue the consumers and as the development of large scale control has brought about the eclipse of

independent enterprisers and the disfranchisement of investors.

Loss of elasticity—progressive incapacity for spontaneous adaptation to new conditions—is the manifest outcome of this increasing specialization and subjugation in industrialized countries. The resiliency and flexibility of a laissez faire economy, under the technological and social conditions characteristic of the period in which that type of institutional structure took shape, were among the most favorable factors promoting the survival of and gaining ascendancy for the societies which adopted it. But under the new technology and its accompaniment of large scale production those same societies in so far as they still hold to the same institutional framework appear to be confronted with a grave dilemma. On the one hand, in the productive sphere there is an increasing pressure toward standardization of the supplies of goods (from so-called fixed costs, overhead costs and intensive specialization). On the other hand, in the sphere of consumption, while standardization is conspicuous enough, demand tends to be transient, febrile and undependable. This is partly due to the fact that with increasing productivity and the rise in the general standard of living an increasing proportion of the social income is perforce spent upon goods and services catering to passing wants instead of being devoted to imperative human needs. To an even greater extent, however, it appears to be traceable to the circumstance that savings also and for the same reasons, assigned a steadily increasing proportion of total income, are nevertheless egregiously erratic, the more so because of the pronounced inequalities in the distribution of the social wealth and income, magnified in recent years by the growth of large scale ownership and large scale control.

In these circumstances the economical allocation of productive resources has become if not impossible at least little better than a sheer gamble. Until there is resolved the fundamental discrepancy between the unremitting pressure of a productive system made up of minutely specialized and rigidly "fixed" cost elements to turn out a continuous stream of strictly standardized products and the persistent pressure of consumptive forces for an output of capital equipment, style goods and luxuries increasingly variable in kind and somewhat in time, it may safely be predicted that there will be no cessation of the prevalent "social unrest." For there can be no social peace where there is no economic security. And there cannot be economic security so long as industry functions in an institutional milieu founded upon such an anomaly.

MYRON W. WATKINS

See: PRODUCTION; INCREASING RETURNS; COST; OVERHEAD COST; STANDARDIZATION; SPECIALIZATION; LOCALIZATION OF INDUSTRY; FACTORY SYSTEM; INDUSTRIAL REVOLUTION; MACHINES AND TOOLS; TECHNOLOGY; LANDED ESTATES; PLANTATION; POWER, INDUSTRIAL; MARKET; MANAGEMENT; EFFICIENCY; BUSINESS ADMINISTRATION; SCIENTIFIC MANAGEMENT; PROFIT; COMBINATIONS, INDUSTRIAL; CARTEL; TRUSTS; HOLDING COMPANIES; CORPORATION; RETAIL TRADE; RATIONALIZATION; NATIONAL ECONOMIC PLANNING; LABOR MOVEMENT; SOCIALISM; GUILD SOCIALISM; CONSUMPTION; INDUSTRIALISM; RURAL INDUSTRIES.

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LA ROCHEFOUCAULD-LIANCOURT, DUC FRANÇOIS DE (1747–1827), French philanthropist. Although La Rochefoucauld-Liancourt belonged to the high nobility and held an important position in the court of Louis XVI, his primary interest was in economic improvement and philanthropic reform. A fast friend of Arthur Young, he introduced on his estate at Liancourt English methods of land cultivation and erected two manufactories. In 1789 he was elected deputy to the Constituent Assembly, where he took an active part in the work of the Comité de Mendicité, insisting upon the rights of indigents and stressing the necessity of replacing private charity by scientifically organized public welfare work. Forced to emigrate during the Terror, he went to the United States for extended study; his *Voyages dans les États-Unis d'Amérique* (8 vols., Paris 1799) abound in practical information. Following his return to France during the Consulate La Rochefoucauld-Liancourt in company with other philanthropists set out under the direction of the chemist Chaptal, one of Napoleon's ministers, to introduce practical improvements and reforms along many lines. He was instrumental in founding the Société d'Encouragement à l'Industrie Nationale, which still exists, and in reviving and reorganizing at Châlons-sur-Marne the École d'Arts et Métiers, which he had set up on his estate in the period before the revolution. He was one of the first in France to champion vaccination against smallpox and in 1815 was one of the founders of the Société pour l'Instruction Élémentaire, which introduced the Lancaster method in France. He was president of the savings bank of Paris, founded in 1818. During the final years of his life he took up once again his agricultural and industrial enterprises at Liancourt. His funeral was an occasion for a great liberal demonstration.

GEORGES WEILL

Consult: Ferdinand-Dreyfus, *La Rochefoucauld-Liancourt* (Paris 1903); France, Ministère de l'Instruction Publique, *Procès-verbaux et rapports du Comité de Mendicité de la Constituante 1790–1791*, ed. by Camille Bloch and Alexandre Tuetey, Collection de documents inédits sur l'histoire économique de la Révolution française (Paris 1911).

LA SAGRA Y PÉRIZ, RAMÓN DIONISIO DE. *See* SAGRA Y PÉRIZ, RAMÓN DIONISIO DE LA.

LA SALLE, SAINT JEAN-BAPTISTE DE (1651–1719, canonized 1900), French ecclesiastic and educationist. La Salle was born and educated at Reims. In 1670 he went to Paris to complete his ecclesiastical studies at the Seminary of Saint-Sulpice, where he became impressed with the gratuitous parish schools for poor children. When he returned to Reims he devoted himself increasingly to educational work and finally in 1684 founded the Institute of the Brothers of the Christian Schools. This movement spread rapidly. The institute soon included not only free schools but also a novitiate for boys from fourteen to seventeen and a training college designed particularly to supply schoolmasters for country parish schools. In 1699 La Salle established at Saint-Sulpice a Sunday continuation school for young artisans, in which mathematics, drawing and trade subjects were taught. In 1705 an institute for training "brothers" was opened at Saint-Yon near Rouen, to which was added a fee paying school for boys

of the lower middle class, thus foreshadowing the modern *école primaire supérieure* and *Realschule*. La Salle also organized in 1709 what was probably the earliest reformatory. At his death the institute had 9000 pupils; at the revolution, 36,000. During the second half of the nineteenth century its activities were still further developed, and they have spread all over the world. At the present day the brothers maintain normal institutes, colleges, secondary and elementary schools, trade, technical, commercial and agricultural schools, orphanages and industrial reformatories. The total number of pupils at the end of 1931 was 302,733.

La Salle's insistence that pupils learn to read first in French rather than in Latin and his substitution of simultaneous for individual instruction in the elementary school were important reforms in contemporary educational practise. Both in his educational schemes and in his teaching methods, which he prescribes in his *Conduite à l'usage des écoles chrétiennes* (Avignon 1720, new ed. Paris 1838), La Salle owes much to other pioneers; but his genius consisted in his realization of the value of their suggestions and in putting them effectively into practise. The present activities of the institute have developed directly out of his work and are still carried on under his inspiration.

H. C. BARNARD

Consult: Guibert, Jacques, *Histoire de S. Jean-Baptiste de La Salle* (2nd ed. Paris 1901); Thompson, Francis, *The Life and Labours of Blessed John Baptist de la Salle* (London 1891); Laudet, Fernand, *Saint Jean-Baptiste de la Salle, l'instituteur des instituteurs* (Tours 1929); Adamson, J. W., *Pioneers of Modern Education* (Cambridge, Eng. 1905) ch. xii.

LAS CASAS, BARTOLOMÉ DE (1474–1566), Spanish missionary and emancipator. Las Casas studied philosophy and the humanities at the University of Salamanca. In 1502 he left Spain for America and settled on the island of San Domingo, where he exploited the natural resources of his father's estates. Even after entering the priesthood in 1510 he continued to employ the economic practises common among the Spanish colonists in America and became an *encomendero* in Cuba, a position entitling him to operate his estates by enforced Indian labor. In 1514, possibly as a result of contact with Dominican friars, his messianic spirit was aroused. He began an impassioned and life long struggle to halt the exploitation of the Indians and to establish an Indian policy aimed toward the conversion and enlightenment of their naturally virtuous souls. The diverse methods by which he sought to give reality to the title of General Protector of All Indians, which the Spanish government conferred upon him in 1515, included missionary enterprises, intercessions with the authorities in Spain and polemics. In 1517 he persuaded the Spanish government to accept the proposal made by the *encomenderos* that they would liberate the Indians provided they each be granted twelve Negro slaves from Africa. The measure on the one hand failed of its intention and on the other acted as a stimulant to the Negro traffic. Las Casas later repented of his part in the early stages of this traffic, although he was not, as has been charged, responsible for its introduction. In 1520 and again in 1521 he tried unsuccessfully to establish ideal communities of Indians on the Cumaná River in modern Venezuela. After a period of seclusion in the San Domingo priory of the Dominican order, which he entered in 1523, he undertook to apply his ideas for the conversion of the Indians in Guatemala, this time with striking results. Between 1534 and 1539 he maintained a theocratic polity in the Guatemalan provinces of Cobán and Tuzulatlán, admitting only indigenous Indians and excluding white men, making concessions to the native customs and slowly initiating the aborigines into civilized life. Making his fourth voyage to Spain after this experiment he was largely responsible for the promulgation of the *Nuevas leyes de Indias* of 1542, which abolished Indian slavery and provided for the gradual eradication of the encomienda system. A doctrinal ally of Las Casas' position was furnished by the ideas then current in the highest cultural circles of Spain, where the school of Francisco de Victoria had propagated the conception of a natural law identical for all men and of a religious although not dogmatic unity of the human race. But despite ideological support, the favor of the king and the Council of the Indies, the assistance of the Franciscans and Dominicans and the pope's dictum in 1537 that the Indians were rational beings worthy of elevation to the status of other Christians Las Casas' efforts succumbed before the forces making for the triumph of a seigniorial economic system in Spanish America. The *Nuevas leyes* were whittled down to impotence. Las Casas' work was, however, an important contributory cause for the emphasis in eighteenth century literature on the excellences of the primitive man. His principal writings were: *Brevissima relación de la destruyción de las Indias* (Seville 1552, repr. as *Breve* . . .

Indias occidentales, 1821; tr. by F. A. MacNutt in his *Bartholomew de Las Casas*, New York 1909, app. i); *Historia de las Indias* (first published 5 vols., Madrid 1875–76; 2nd ed. by Gonzalo de Reparaz, 3 vols., 1927), a work with which he was occupied from 1520 until 1561 and which is not only an important source for ethnological materials but also one of the first histories of America; and *Apologética historia de las Indias* (first published Madrid 1909).

FERNANDO DE LOS RÍOS

Consult: Fabié y Escudero, A. M., *Vida y escritos del padre Fray Bartolomé de Las Casas* (Madrid 1879); MacNutt, F. A. M., *Bartholomew de Las Casas* (New York 1909); Helps, Arthur, *The Life of Las Casas* (3rd ed. London 1873); de los Ríos, F., "El anhelo universalista en los teólogos españoles del siglo XVI" in *Revista de estudios hispánicos*, vol. i (1928) 125–32; Plischke, Hans, "Westindien und Las Casas" in *Archiv für Kulturgeschichte*, vol. xviii (1928) 309–27; Stoll, Otto, "Der Bischof Bartolomé de Las Casas, ein Zeitgenosse des Columbus, seine wissenschaftlichen und humanitären Verdienste" in Geographisch-ethnographische Gesellschaft in Zurich, *Mitteilungen pro 1907–1908* (Zurich 1908) p. 25–69; Tschan, F. J., "Las Casas (c. 1474–1566)" in *Church Historians*, ed. by Peter Guilday (New York 1926) p. 128–52.

LASKER, EDUARD (1829–84), German statesman. Lasker, the son of a Jewish merchant, was born in Posen. He studied law at Breslau and Berlin and in 1848 participated in the academic legion of Robert Blum in Vienna. He became an admirer of English liberalism and individualism during his travels in England from 1853 to 1856. On his return to Prussia he attracted attention by his journalistic work and in 1865 became a member of the Prussian lower chamber. He was a member of the Diet of the North German Confederation after 1866 and after 1870 was one of the leaders of the National Liberal party in the Reichstag.

Lasker was one of the most prominent representatives of early German parliamentarism. He was active at the time of the foundation of the German Empire in endeavoring to win the public opinion of south Germany in favor of a union with the north and collaborated with Bismarck in the constitutional development of the empire. As a parliamentarian he was an active member of innumerable commissions, being responsible for the resolutions demanding a common law of obligations, commercial law, criminal law and civil law for the empire, and for the address which the newly elected Reichstag in 1871 presented to the emperor. Distinguished by erudition and by a very lucid if pedantic power of exposition, he held by reason of his upright character a very estimable position as a watchful fighter of all corruption. When Bismarck inaugurated a policy of protectionism and discriminatory legislation against the Social Democrats, Lasker went over to the opposition; and when his party allowed itself to be led by Bismarck up to the point of abandoning its own will, he left it in 1880. In 1883 he toured the United States; he died suddenly in New York. So great an aversion did Bismarck retain for the man who had taken such a prominent part in the accomplishment of his work that he did not pass on to the German Reichstag a message of condolence on this occasion from the American House of Representatives. Lasker, who is closely associated with Ludwig Bamberger, was not so much a creative personality as a representative of a humanitarian nationalism and of a trusting liberalism suspicious of the state and advocating self-government in civil matters.

THEODOR HEUSS

Consult: Bamberger, L., *Eduard Lasker* (Leipsic 1884); Schmoller, G., *Zur Social- und Gewerbepolitik der Gegenwart* (Leipsic 1890) p. 327–41; Klein-Hatlingen, Oskar, *Geschichte des deutschen Liberalismus*, 2 vols. (Berlin 1911–12).

LASPEYRES, ÉTIENNE (1834–1913), German statistician and economist. Laspeyres studied at Heidelberg and from 1874 to 1900 taught at the University of Giessen. His main contribution is in the field of statistics, especially price statistics. Of his early work his researches concerning Hamburg commodity prices from 1851 to 1863 are especially well known. Later he published a number of comprehensive price studies, the materials for which were collected and worked up in his small statistical laboratory. The most important of them deal with general price movements in the second half of the nineteenth century and with Prussian prices of farm products from 1821 to 1895. In connection with his price studies Laspeyres also made important contributions to the technique of index numbers. He originated the index number formula $\frac{\Sigma p_1 \cdot q_0}{\Sigma p_0 \; q_0}$, in which the numerator is the sum of current prices with basic period weights and the denominator the sum of base period prices similarly weighted. He never applied this formula, however, for insufficient data prevented him from ascertaining "the quantities of every good consumed in a country." In the pamphlet "Die Kathedersocialisten und die statistischen Congresse" (*Deutsche Zeit- und Streit-Fragen*, vol.

iv, no. 52, Berlin 1875) he pleaded among other things for a quantitative economics which would trace the regularities in social phenomena.

RUDOLF MEERWARTH

Important works: "Hamburger Waarenpreise 1851–1863 und die californisch-australischen Goldentdekkungen seit 1848" in *Jahrbücher für Nationalökonomie und Statistik*, vol. iii (1864) 81–118, 209–36; "Preise (die Bewegungen der Warenpreise in der zweiten Hälfte des 19. Jahrhunderts)" in *Meyers Konversations-Lexikon*, vol. xx (3rd ed. Leipsic 1883) p. 795–803; "Einzelpreise und Durchschnittspreise vegetabilischer und animalischer Produkte in Preussen während der 75 Jahre 1821 bis 1895" in Prussia, Statistisches Bureau, *Zeitschrift*, vol. xli (1901) 51–81; "Die Berechnung einer mittleren Waarenpreissteigerung" in *Jahrbücher für Nationalökonomie und Statistik*, vol. xvi (1871) 296–314; "Statistischen Untersuchungen zur Frage der Steuerüberwälzung" in *Finanz-Archiv*, vol. xviii (1901) 46–282; *Geschichte der volkswirtschaftlichen Anschauungen der Niederländer* (Leipsic 1863); *Der Einfluss der Wohnung auf die Sittlichkeit* (Berlin 1869).

LASSALLE, FERDINAND (1825–64), German socialist labor leader. Lassalle, an exceptionally precocious son of a Jewish merchant, displayed even in school those characteristics which were later to bring about his rise as well as his sudden downfall: an iron will, a rare demagogical talent and a driving ambition. He was as egocentric as he was determined to free individuals and groups from injustice and oppression. The Jews in Prussia enjoyed at the time no political equality and were regarded socially with increasing disdain. For this very reason Lassalle while a student was drawn to the ruling aristocratic circles and there found the first opportunity to play the role of liberator to which he felt himself born. He became the trusted friend of Countess Hatzfeldt, twenty years older than himself, who in her numerous lawsuits against her husband found insufficient sympathy among her aristocratic acquaintances. In the course of managing her affairs Lassalle developed into a learned jurist and a powerful public speaker.

It was Lassalle's great contribution to call into being the first political party of German workers, the Allgemeiner Deutscher Arbeiterverein, organized in 1863. Although during the Revolution of 1848 he belonged to the small communist group which gathered around Marx and although he adapted some of Marx' ideas Lassalle cannot be considered a pupil of Marx. While both men were decisively influenced by Hegel, Marx abandoned and Lassalle retained the point of view of German idealistic philosophy. Marx materialized dialectic into the class struggle; but Lassalle, as is shown by *Das System der erworbenen Rechte* (Leipsic 1861), did not regard the world of ideas as determined entirely by economic and class relations. He remained under the influence of Hegel's philosophy of the state, that peculiar mixture of the tradition of the Greek *polis* and Prussian bureaucracy. His view of the state and his theory of the "iron law of wages" led him to neglect economic struggle and organization and to demand that the government help the workers by granting them capital or credit with which they might organize producers' cooperatives. Richer in ideas than Louis Blanc, more effective than Rodbertus and Lorenz von Stein, all of whom stimulated him, Lassalle preached that brand of state socialism which still dominates certain sections of the Social Democratic party.

In 1863 Lassalle attacked the Liberal Progressive party, which was waging a struggle with Bismarck over parliamentary government in Prussia, and thereby created a tactical community of interests between the revolutionary and the reactionary opponents of the liberal bourgeoisie. Lassalle's chief political demand was immediate universal suffrage, which he expected Bismarck would be forced to grant in the event of war for the unification of Germany. But his egocentric nature required more rapid results than the march of events promised; he had discussed the matter personally with Bismarck and had almost decided to break off his agitation, the results of which appeared so slow, when he was killed in a duel.

GUSTAV MAYER

Works: *Gesammelte Reden und Schriften*, ed. by Eduard Bernstein, 12 vols. (Berlin 1919–20); *Nachgelassene Briefe und Schriften*, ed. by Gustav Mayer, 6 vols. (Stuttgart 1921–25); *Bismarck und Lassalle, Ihr Briefwechsel und ihre Gespräche*, ed. by Gustav Mayer (Berlin 1928); *Ferdinand Lassalles Briefe an Georg Herwegh*, ed. by Marcel Herwegh (Zurich 1896); *Briefe an Hans von Bülow von Ferdinand Lassalle* (Dresden 1893); *Intime Briefe F. Lassalles an Eltern und Schwester*, ed. by Eduard Bernstein (Berlin 1905).

Consult: Brandes, G., *Ferdinand Lassalle* (London 1911); Dawson, W. H., *German Socialism and Ferdinand Lassalle* (3rd ed. London 1899); Oncken, H., *Lassalle, eine politische Biographie* (4th ed. Stuttgart 1923); Bernstein, Eduard, *Ferdinand Lassalle, eine Würdigung des Lehrers und Kämpfers* (Berlin 1919), and "Ferdinand Lassalle und seine Bedeutung in der Geschichte der Sozialdemokratie" in Lassalle's *Reden und Schriften*, vol. i (Berlin 1892) p. 5–185, tr. by E. Marx Aveling as *Ferdinand Lassalle as a Social Reformer* (London 1893); Becker, Bernhard, *Geschichte der Arbeiter-Agitation Ferdinand Lassalles* (Brunswick 1874); Baron, S., *Die politische Theorie Ferdinand*

Lassalles, Archiv für die Geschichte des Sozialismus und der Arbeiterbewegung, Supplement, no. 2 (Leipsic 1923); Thier, E., *Rodbertus, Lassalle, Adolph Wagner* (Jena 1930).

LASTARRIA, JOSÉ VICTORINO (1817–88), Chilean statesman, historian and jurist. At first a disciple of the Benthamite Andrés Bello, Lastarria later joined the distinguished company of Latin Americans who were greatly affected by the ideals of the French Revolution of 1848. He showed the influence of Edgar Quinet among others and later became imbued with the ideas of Comte. He exercised a powerful influence upon the intellectual and political growth of Chile.

Lastarria's efforts to further the production of a national literature together with his own numerous works in the fields of the novel, geography, biography, history, sociology and political science have won for him the title of "the father of Chilean literary development." In his critical and philosophic *Investigaciones sobre la influencia social de la conquista i del sistema colonial de los españoles en Chile* (Santiago, Chile 1844) he departed from the purely narrative type of history then in vogue in Chile. In his political and social analysis *La América* (Buenos Aires 1865; 2nd ed. of pt. i Ghent 1867), which also includes a considerable amount of historical material, and in his *Recuerdos literarios* (Santiago, Chile 1878, 2nd ed. 1885), which contains a literary history of the nation during its first fifty years of independent life, he expressed his faith not only in America but in democratic institutions. His confidence in the latter finds full expression in that part of his legal works which is devoted to the study of the national public law and constitutional development, a discipline which he introduced into Chile. Perhaps the most outstanding of his works in political science and sociology, which are rather doctrinaire in character, is his *Lecciones de política positiva* (Santiago, Chile 1874; 2nd ed. Paris 1875). García Calderón compares Lastarria with Francisco Bilbao (1823–65), calling the former the politician and the latter the apocalyptic dreamer of the group of reformers who sought, according to Lastarria, to erect a state which has for its object respect for the rights of the individual. The activity of these reformers brought about after some thirty years of conservative rule the era of the liberal republic which began in the 1860's.

PAUL VANORDEN SHAW

Works: *Obras completas*, ed. by A. Fuenzalida Grandón, 8 vols. (Santiago, Chile 1906–09).

Consult: Fuenzalida Grandón, Alejandro, *Lastarria i su tiempo (1817–1888), su vida, obras e influencia en el desarrollo político e intelectual de Chile*, 2 vols. (new ed. Santiago, Chile 1911); Rodríguez Bravo, Joaquín, *Don José Victorino Lastarria* (Santiago, Chile 1892); Huneeus y Gana, Jorge, *Cuadro histórico de la producción intelectual de Chile* (Santiago, Chile 1910); Edwards, Agustin, *My Native Land* (London 1928) p. 338–41; García Calderón, Francisco, *Les démocraties latines de l'Amérique* (Paris 1912), tr. by B. Miall as *Latin America: Its Rise and Progress* (London 1913) p. 236–39.

LATANÉ, JOHN HOLLADAY (1869–1932), American historian. Latané became professor of history at Johns Hopkins University in 1913 and served as dean of the College of Arts and Sciences from 1919 to 1924. In 1930 he was transferred from the department of history, with which he had continued to maintain his connection, to the faculty of the Walter Hines Page School of International Relations, in the organization of which he took an active part. His primary interests lay in the field of American foreign policy and diplomatic history. As a historian and public lecturer he was known for his independence of judgment and courageousness in criticizing foreign policies of the United States which he considered irreconcilable with true national interests or the canons of international public morality. He had little sympathy for the bogy of "entangling alliances," popular shibboleths and outworn traditions, which in his opinion had played too large a role in the foreign policy of the United States. Although he believed in the Monroe Doctrine as a policy of national defense he belonged to that increasingly large class of American scholars who deplore the tendency to extend by interpretation its original object in order to justify policies of intervention and imperialism in Latin America. He was an ardent supporter of the foreign policies of President Wilson and advocated membership of the United States in the League of Nations and the Permanent Court of International Justice. A severe critic of the policy of American isolation, which he regarded as both selfish and short-sighted, he felt that the United States since becoming a world power had shirked the responsibilities of leadership and thrown away opportunities for helpful cooperation which that leadership had brought. He took an active interest in public affairs, was an effective public speaker and was much in demand as a lecturer before learned societies and civic organizations.

JAMES WILFORD GARNER

Important works: *The Diplomatic Relations of the United States and Spanish America* (Baltimore 1900);

America as a World Power 1897–1907, American Nation series, vol. xxv (New York 1907); *From Isolation to Leadership* (New York 1918, rev. ed. 1922); *The United States and Latin America* (New York 1920); *A History of American Foreign Policy* (New York 1927).

LATHROP, JULIA CLIFFORD (1858–1932), American social worker and public servant. Julia Lathrop belonged to that little group of influential women who lived and worked at Hull House in the 1890's. During her residence there she played a part in establishing the Juvenile Court of Cook County and in developing its probation work; she was connected with the early effort to provide professional education for social workers in Chicago; she served (1893–1901 and 1906–09) on the State Board of Charities, visiting all parts of the state to learn how state and county governments provided for the handicapped whose care they had assumed and to stimulate by counsel and advice improved methods of care. In 1912 she was appointed chief of the newly organized Children's Bureau in the United States Department of Labor, a position which she held until 1921. In this capacity she succeeded in winning an accepted place for the new bureau in the national government, in attracting to its positions an unusually able personnel selected by competitive examination through the Civil Service Commission, in selecting vital subjects for study and in establishing high standards for the quality of research; she was instrumental in the extension of the birth registration area, in achieving an efficient administration of the federal child labor law during its brief existence and in the passage of the Sheppard-Towner Act of 1921, which provided federal grants-in-aid to the states for use in promoting maternal and infant hygiene. In 1925 she was appointed by the United States government as assessor to the Child Welfare Committee of the League of Nations.

Julia Lathrop's interests were many and varied but her work centered in the three fields of public welfare administration, child welfare and public civil service. It was characterized by a few dominant ideas to which she sought to give expression: public responsibility for the care of the handicapped, the importance of "a public service of such practical opportunities and such great ideals that our ablest youth may look forward to it as a career" and a strong belief in the value of a knowledge of the facts. She repeatedly stated her conviction that an agency which had the power to investigate and report the relevant facts was able to accomplish a great deal. Her personal qualities had much to do with the effectiveness of her work. She was willing to compromise when she could do so without betraying her ideals and ready to hold out to the end when compromise appeared worse than failure. Her sense of perspective made it possible for her to appreciate the past and enthusiastically to serve causes in the present without believing that she had found the ultimate solution.

HELEN R. WRIGHT

Consult: Addams, Jane, "A Great Public Servant, Julia C. Lathrop" in *Social Service Review*, vol. vi (1932) 280–85, and editorial, p. 301–06.

LATIFUNDIA. It is probable that at the height of the Etruscan empire, in the seventh and sixth centuries B.C., there sprang up in central Italy a class of large proprietors; there is no other explanation for the luxury of the aristocracy, the existence of great drainage systems which improved part of the land of southern Etruria and Latium, and the development of grape and olive cultivation. Even at Rome tradition preserved the memory of the vast domain of the Tarquins. In the early years of the republic, however, the advances made by the plebeians finally strengthened the peasant proprietors; the result was such a diffusion of landownership that in the early years of the third century the average farm holding was only seven jugers (a little more than four acres). The right to the use of the *ager publicus* was so regulated as to check its preemption by the great livestock raisers, but within the following century a marked change set in and after 200 B.C. the land came to be increasingly concentrated in the possession of the ruling aristocracy.

There were several leading causes for this concentration of land. First, the free small peasant had been ruined by a long series of wars and also by the usurious practises then prevailing, while as a result of conquest wealth accumulated at Rome. Since by the *lex claudia de senatoribus* (*c.* 220 B.C.) senators were prohibited from engaging in commerce and banking, they were compelled to find new outlets for their capital in the acquisition of landed estates. Second, free labor was not able to withstand the competition of the slaves, who had been introduced into the republic in great numbers following the victories of the Roman generals. Third, the Roman state owned a vast public domain which lent itself to usurpation. Fourth, Italian agriculture was unable to compete with the grains sent as tribute to Rome by

the provinces. The importance of this last factor must not be exaggerated, however, for the inadequacy of transportation facilities at this period narrowly limited the penetration of foreign grain into the interior of Italy.

Furthermore conquest rendered Rome mistress of countries in which the governing classes had already organized large estates. In Asia Minor and Syria, for example, the Greeks had long cultivated by rational agricultural methods vast holdings, of which some had been established even before the Persian domination. Hellenistic practises had spread westward and had contributed toward fixing the form of organization of the great estates of the Sicilians and Carthaginians. Even in Gaul the Gallic aristocracy collected rents from peasants living on the large landed properties of their lords.

In the second century B.C. the advances of the large estate and slave labor at first favored the development of a pastoral economy, at any rate in Italy and Sicily. Then following the example of the Hellenistic east and Carthage Roman senators began the commercial exploitation of their properties. The Senate officially ordered the translation of the manual of agronomy written by the Carthaginian Mago. Cato's treatise on agriculture, designed expressly to awaken Roman landowners to a clearer appreciation of their duties as tillers of the soil, furnishes a valuable description of the organization of an Italian farm in the first half of the second century B.C. The estate of which he writes is not an isolated, self-contained property whose owner proposes to raise and fabricate everything for his own needs; on the contrary, Cato points out how important it is that the farm be located near means of communication to allow the easy sale of its produce. Because revenues result largely from the sale of oil and wine, it is imperative that extensive cellars be provided for storage purposes so that advantage may be taken of favorable market prices. The labor supply is made up of slaves and day laborers; apparently free farmers no longer exist. The most striking characteristic of the whole picture is the role played in it by the contractors, who furnish gangs of laborers, clean the land and vineyards and often purchase the hanging crop. Thus a whole class of speculators has sprung into activity about the latifundia.

In the first century of the empire the large estates of Italy, as described by Columella, do not appear to differ materially. The labor used is slave in the case of those estates where the owner himself is able to superintend the operations. But where the holdings are remotely located, recourse is generally had to tenant farmers (coloni). Pliny the Elder makes the latifundia responsible for the decay of land cultivation in Italy and even in the provinces. It is to be noted, however, that such great landed properties were not very stably organized: financial crises (as under Tiberius in 33 A.D.) and periods of great wine surpluses (as under Domitian) frequently forced property transfers. The tablets relating to the *alimenta* in the territory of Veleia (under Trajan) prove plainly that changes in landownership, parceling of large estates and creation of new latifundia were continually taking place.

Even under the republic the large Roman proprietors had been forced to resort, as far as isolated estates were concerned, to coloni instead of to slaves. Similarly under the empire the estates created by the senators and imperial freedmen in north Africa (the *saltus*) and in Egypt (the *ousiai*) were tilled by a native peasantry made up of dispossessed proprietors. In Italy itself in the second century A.D. the decrease in the number of slaves as a result of the termination of the period of conquests caused a labor crisis, which was further aggravated by the depopulation of the countryside. The typical estate of the second century in Italy is described by Pliny the Younger. The proprietor lives only occasionally on his land, leaving active management of his various holdings to the *procurator*. Each particular farm has its own steward, or *villicus*, who is a slave himself and directly in charge of the slave gangs. The field work especially devolves upon the tenant farmers, or coloni, whose permanent tenancy must be secured by long term leases.

Following Nero's confiscations the head of the state became the largest proprietor in the empire, with the result that the Flavians carefully concerned themselves with the administration of their *saltus* in Africa and their *ousiai* in Egypt. African inscriptions reveal the fact that the revenues of the imperial estates were collected by large farmers, or *conductores*, who were actually the lessees and that these in turn were superintended by imperial agents, or *procuratores*. Each estate consisted of two parts: one, comprising the *villae dominicae*, was operated directly by the *conductor* himself; the other was divided into small holdings worked by the coloni. These latter were responsible for the payment of shares of produce and in addition for the rendering of corvée on the part of the

estate farmed directly by the *conductor*. The small tenant farmers were encouraged to reclaim those waste or abandoned portions of the estate which the lessees were permitting to lie untilled; the *lex manciana* of the time of Vespasian and later the more precise *lex hadriana* vested in the coloni not only possession but also a heritable tenure in such lands, on condition that they turn over a fixed rent to the lessee for the account of the state. This separation of the *saltus* into two parts, one partitioned into small holdings, the other the home farm cultivated by the corvée of the coloni, already presages the manor of the Middle Ages.

As a result of the chaos of the third century large holdings increased, for the empire could no longer safeguard the free peasants from attack and their lands from seizure. The villages on their part sought out the protection of military leaders; and this patronage, as it was called, was later converted into a property right. Indeed at the beginning of the fifth century the empire was compelled officially to recognize this usurpation. On its own domains the empire either multiplied perpetual and emphyteutic leases or it required the free proprietors to cultivate the crownlands. At the beginning of the fifth century, however, these practises ceased when the emperor surrendered his property rights in his former domains.

From the beginning of the empire in certain of the provinces the latifundia had formed autonomous administrative districts which were not dependent upon the cities but were directly ruled by the imperial governors. This autonomy continued to increase, with the result that the lands of the senators came to form a privileged category. Further the large proprietors were made responsible for the collection of the taxes of their districts, while to insure the stability of these taxes the state bound the peasants to the soil and made their condition hereditary. The law of Constantine in 332 gave formal legal status to what had been established custom from the time of Severus. In fact in this same fourth century there appeared not only private prisons but the private administration of justice as well. At the same time the large estate tended to acquire economic autonomy. After the debasement of the currency in the third century commercial activity received a severe setback. Since the most flourishing days of the empire the proprietors had acquired from the Senate by individual concessions the right to open markets on their lands. Large villages now grew up around these markets. Finally following the ruin of the municipal regime the proprietors were glad to live on their lands among their dependents.

When the Roman Empire was at its height, the large estates had sustained the senatorial order and had furnished the nation its generals and governors: such had been the social role of the latifundia. It must not be understood, however, that the large estates disappeared during the period of the barbarian invasions. They continued, for the Germans replenished the sorely depleted labor supply and respected the title deeds of the properties. And once again the role of the latifundia became significant, for in many instances the large estate became the manor—the heart of the feudal system of the Middle Ages. The continuity of the Roman period into the mediaeval period is particularly clear in the west in the case of the church lands and in the east in the case of the estates of the Byzantine lords.

ANDRÉ PIGANIOL

See: LANDED ESTATES; LAND TENURE, section on ANCIENT WORLD; COLONATE; AGRARIAN MOVEMENTS, section on CLASSICAL ANTIQUITY; SLAVERY; SERFDOM; FARM TENANCY; MANORIAL SYSTEM.

Consult: Weber, Max, *Die römische Agrargeschichte in ihrer Bedeutung für das Staats- und Privatrecht* (Stuttgart 1891), and "Agrargeschichte," sect. i, "Agrarverhältnisse im Altertum" in *Handwörterbuch der Staatswissenschaften*, 8 vols. (3rd ed. Jena 1909–11) vol. i, p. 52–188; Heitland, W. E., *Agricola* (Cambridge, Eng. 1921); Rostovtzeff, M. I., *The Social and Economic History of the Roman Empire* (Oxford 1926); Clausing, Roth, *The Roman Colonate: the Theories of Its Origin*, Columbia University, Studies in History, Economics and Public Law, vol. cxvii, no. 1 (New York 1925); Mommsen, Theodor, "Die italische Bodenteilung und die Alimentartafeln" in his *Gesammelte Schriften*, vol. v (Berlin 1908) ch. ix; Gummerus, Herman, "Der römische Gutsbetrieb als wirtschaftlicher Organismus nach den Werken des Cato, Varro und Columella" in *Klio*, supplement no. 5 (Leipsic 1906); Kromayer, Johannes, "Die wirtschaftliche Entwicklung Italiens im II. und I. Jahrhundert vor Chr." in *Neue Jahrbücher für das klassische Altertum, Geschichte und deutsche Literatur und für Pädagogik*, vol. xxxiii (1914) 145–69; Pachtère, F. G. de, *La table hypothécaire de Veleia*, École Pratique des Hautes Études, Bibliothèque, Sciences Historiques et Philologiques, vol. ccxxviii (Paris 1920) ch. vi; Fustel de Coulanges, N. D., "L'alleu et le domaine rural pendant l'époque mérovingienne" in his *Histoire des institutions politiques de l'ancienne France*, vol. iv (Paris 1889); Schulten, Adolf, *Die römischen Grundherrschaften* (Weimar 1896) p. 12–15, 19–20; Beaudouin, Édouard, "Les grands domaines dans l'empire romain" in *Nouvelle revue historique de droit français et étranger*, vol. xxi (1897) 543–99, 673–720, and vol. xxii (1898) 27–115, 194–219, 310–50, 545–84, 694–746; Broughton, T. R.

S., *The Romanization of Africa Proconsularis*, Johns Hopkins University, Studies in Historical and Political Science, extra volumes, n.s., no. v (Baltimore 1929) ch. v; Rostovtzeff, M. I., *A Large Estate in Egypt in the Third Century B.C.*, University of Wisconsin, Studies in the Social Sciences and History, no. vi (Madison 1922); *Studies in the History and Art of the Eastern Provinces of the Roman Empire*, ed. by W. M. Ramsay, Aberdeen University, Studies, no. xx (Aberdeen 1906); Fustel de Coulanges, N. D., "Le colonat romain" in his *Recherches sur quelques problèmes d'histoire* (2nd ed. Paris 1894) p. 1–186; Rostovtzeff, M. I., "Geschichte der Staatspacht in der römischen Kaiserzeit" in *Philologus, Supplementband*, vol. ix (1902) 329–512, and "Studien zur Geschichte des römischen Kolonates" in *Archiv für Papyrusforschung und verwandte Gebiete*, supplement no. 1 (1910); Mitteis, Ludwig, "Zur Geschichte der Erbpacht im Alterthum" in Sächsische Akademie der Wissenschaften, Philologisch-historische Classe, *Abhandlungen*, vol. xx, no. iv (Leipsic 1901); Waszyński, Stefan, *Die Bodenpacht. Agrargeschichtliche Papyrusstudien*, vol. i– (Leipsic 1905–); Gummerus, Herman, "Die Fronden der Kolonen" in Finska Vetenskaps-Societeten, *Öfversigt af förhandlingar*, vol. 1, no. iii (Helsingfors 1907–08); Wiart, René, *Le régime des terres du fisc au Bas-Empire* (Paris 1894); His, Rudolf, *Die Domänen der römischen Kaiserzeit* (Leipsic 1896); Zulueta, Francis de, "De patrociniis vicorum" in *Oxford Studies in Social and Legal History*, vol. i, pt. ii (Oxford 1909); Dopsch, Alfons, *Wirtschaftliche und soziale Grundlagen der europäischen Kulturentwicklung*, 2 vols. (2nd ed. Vienna 1923–24) vol. i; Mommsen, Theodor, "Die Bewirthschaftung der Kirchengüter unter Papst Gregor I" in his *Gesammelte Schriften*, vol. iii (Berlin 1907) ch. xviii; Gelzer, Matthias, *Studien zur byzantinischen Verwaltung Ägyptens*, Leipziger historische Abhandlungen, vol. xiii (Leipsic 1909); Hardy, E. R., *The Large Estates of Byzantine Egypt*, Columbia University, Studies in History, Economics and Public Law, no. 354 (New York 1931).

LATIN MONETARY UNION. *See* MONETARY UNIONS.

LA TOUR DU PIN CHAMBLY, RENÉ DE, MARQUIS DE LA CHARCE (1834–1924), French social theorist. While held captive by the Germans during the Franco-Prussian War La Tour du Pin and Albert de Mun, both French officers and ardent Catholics, began to work out their program for the regeneration of France through the church. In 1871 they founded the Oeuvre des Cercles Catholiques d'Ouvriers, a society aiming not to rouse the laborers to independent action for the furtherance of their interests but to unite them in Christian corporations with the employers and to place them under the guidance of directive committees recruited from the upper classes. In contrast to de Mun, who was the orator and propagandist of the Oeuvre, La Tour du Pin was its theorist and the principal editor of the economic and social journal *Association catholique* published by the society. When he came to collect his most important articles and reports as *Vers un ordre social chrétien, Jalons de route, 1882–1907* (Paris 1907, new ed. 1929) he stated in the preface: "The rupture with liberalism in religion, in economics, in politics, is its guiding thread from first to last." He went on to demonstrate that after having taken the Catholic, anti-equalitarian and anti-individualistic view with regard to the labor question he had gradually broadened its application until he finally became convinced of the necessity of a Bourbon restoration in France. During the centenary celebration of 1889 he gave a number of lectures outlining a program directly opposed to the ideas of the French Revolution. After 1892 the close association which had previously existed between him and de Mun began to be severed. While de Mun obeyed the instructions issued by Pope Leo XIII in 1893 and became reconciled to the republic, La Tour du Pin remained consistently royalist; he also accepted the title of Christian Socialist, which de Mun disavowed. The Oeuvre, which had resulted from their collaboration, had since its foundation served as a center for the social Catholic movement and for the Catholic opponents of laissez faire. Its social program while always enshrouded in considerable vagueness had become somewhat clarified, and La Tour du Pin had ended by advocating intervention by the Christian state as a means of establishing the corporate regime. But during the 1890's it became increasingly evident that there was little correspondence between his ideas and those of the Catholic masses, the upper classes being liberal in their economic outlook and the workers being repugnant to the leadership of the élite. La Tour du Pin's political sympathies caused him toward the end of his life to become affiliated with the Action Française. La Tour du Pin had had an important part in the summoning of the first international congress of the Union Catholique d'Études Sociales et Économiques in 1884.

GEORGES WEILL

Consult: Chenevers, *Le marquis de La Tour du Pin* (Reims 1907); Lecanuet, E., *Les dernières années du pontificat de Pie IX 1870–78* (new ed. Paris 1931) p. 391–422; Weill, Georges, *Histoire du mouvement social en France, 1852–1924* (3rd ed. Paris 1924) p. 181–84; Rivain, Jean, *Un programme de restauration sociale, La Tour du Pin, précurseur* (Paris 1926); Fontanille, Henri, *L'oeuvre sociale d'Albert de Mun* (Paris 1926) p. 66–72.

LAU, THEODOR LUDWIG (1670–1740), German cameralist. Lau, who was trained as a jurist, entered in 1701 the service of Duke Friedrich Wilhelm von Kurland, of whose cabinet he became director. He lived for a time at Frankfort on the Main, where his *Meditationes philosophicae de Deo, mundo, homine* appeared in 1717. The book, which was confiscated by the city council of Frankfort as atheistic, attracted wide attention, but Lau was forced to flee. Because of his "atheism" he was unable to secure a post of any kind, and only by a formal apology before the consistory of his native province of East Prussia in 1729 was he able to free himself from the stigma. At this time he composed *Die Menschwerdungs-Historie des Heylandes der Heyden* (Königsberg 1730).

Besides his importance in the philosophy of the Enlightenment Lau occupies a leading position as a writer on economic subjects. He is a typical mercantilist. Although his economic works are based on the works of the Austrian cameralists, he greatly surpasses them in clarity of conception. As with all mercantilists the national idea is prominent in Lau's thought. Thus he advocates population increase as a prime duty and favors polygamy. The prosperity of the country consists in the cooperation of the people and the rulers. The most important classes in the nation are the farmers, the artisans and the merchants. The encouragement of manufactures and of commerce, the establishment of a bank and a rich exchequer, serve to promote the national economy. As opposed to many mercantilists Lau does not see in money the means to the wealth of the country, but he emphasizes its importance as currency. He was conscious of the international interdependence of the money market and always endeavored to strengthen the credit of the country and of private persons. On this ground he also demanded a just system of taxation, advocated the establishment of a tax commission (*Steuerkollegium*) and the introduction of an income as well as a property tax. The first German writer to make use of the word *Nationalökonomie*, he drew up a complete system of economic science and his classification of cameralistic science was generally followed to the end of the cameralistic period. Lau forms the juncture between the old and the new theoretically trained cameralists.

KURT ZIELENZIGER

Other important works: *Politische Gedancken*, published anonymously (Frankfort 1717); *Entwurff einer Wohl-eingerichteten Policey*, anonymously (Frankfort 1717); *Auffrichtige Nachricht von dem jetzigen Etat des Finantz-Wesens der Respublicq des Vereinigten Niederlandes*, anonymously (Cologne 1717); *Aufrichtiger Vorschlag: von glücklicher: vortheilhafftiger: beständiger: Einrichtung der Intraden: und Einkünfften: der Souverainen: und ihrer Unterthanen* (Frankfort 1729); *Practische Vorschläge welcher Gestalt Steuer und respective Contribution zum Nutzen eines Landesherren*, anonymously (n.p. 1721).

Consult: Zielenziger, Kurt, *Die alten deutschen Kameralisten*, Beiträge zur Geschichte der Nationalökonomie, vol. ii (Jena 1914) p. 391–413, and "Theodor Ludwig Lau" in *Jahrbücher für Nationalökonomie und Statistik*, vol. cxxii (1924) p. 22–34; Mauthner, Fritz, *Der Atheismus und seine Geschichte im Abendlande*, 4 vols. (Stuttgart 1920–23) vol. iii, p. 234–49.

LAUD, WILLIAM (1573–1645), English ecclesiastic. Laud, the son of a small cloth maker at Reading, rose through a series of minor ecclesiastical dignities to the position of archbishop of Canterbury and in that office, which he held from 1633, became the principal adviser of King Charles I. He shared in the king's mistakes and added to them some of his own, including the personal faults of a sharp manner and autocratic temper which had much to do with his downfall and subsequent execution. But essentially the hatred he aroused was due to a conflict of principles in which Laud stood for conceptions no longer applicable in that form to the conditions of English life.

In themselves the ideals to which he devoted his life with complete absence of self-seeking were noble and of ancient lineage: they were the principles that had been laid down majestically by Hooker and derived by him from mediaeval philosophers. Unity was the keynote and the establishment of a humane society on the basis of the revealed divine will the aim. A Christian society was necessarily a unity in which different offices, kingship and episcopacy, equally of divine appointment, performed complementary functions. In this theocratic view religion was something much more than a sentiment of the individual soul: it was the basis of society, the soul of the structure. For Laud government must be the expression and expansion of Christian civilization; otherwise it becomes merely an instrument for the free play of human cupidity.

When acting in the High Commission and the Star Chamber and the other committees that governed after Charles had dispensed with Parliament, Laud set himself, on the one hand, to limit the power of the landlords and to protect the peasants from encroachments and, on the other, to prevent the monopolists from lining

their pockets. Such acts brought him into violent collision with the party of the new rich. He was an advocate of ordinary men against those who would interfere with their simple pleasures. He opposed the Puritan conception of the Sabbath, protected the theater from their attacks and was a great patron of humane learning at Oxford, Dublin and elsewhere. While he cared much for the outward seemliness of worship he was for his time moderate and liberal in theology. The order he wished to impose would have been founded on reason and expressed in beauty. But the day for his methods was over: authority had to discover new bases.

A. S. DUNCAN-JONES

Works: *Works*, ed. by W. Scott and J. Bliss, 7 vols. (London 1847–60).

Consult: Duncan-Jones, A. S., *Archbishop Laud* (London 1927); Hutton, W. H., *William Laud* (London 1895); Simpkinson, C. H., *Life and Times of William Laud, Archbishop of Canterbury* (London 1894); Gardiner, S. R., *History of England from the Accession of James I to the Outbreak of the Civil War 1603–1642*, 10 vols. (London 1893–95); Tanner, J. R., *English Constitutional Conflicts of the Seventeenth Century 1603–1689* (Cambridge, Eng. 1928) p. 13–16, and chs. v–vi; Gooch, G. P., *English Democratic Ideas in the Seventeenth Century* (2nd ed. by H. J. Laski, Cambridge, Eng. 1927) p. 79–86; Tawney, R. H., *Religion and the Rise of Capitalism* (London 1926) p. 170–75.

LAUDERDALE, EIGHTH EARL OF, JAMES MAITLAND (1759–1839), English statesman and economist. After studying law in Scotland and Paris Lauderdale entered Parliament at twenty-one. He was at first interested chiefly in the heated political controversies of the period. He was one of the managers of the Hastings impeachment and helped found the Friends of the People. Later he became conservative and in 1832 fought against reform. A critical reading of *The Wealth of Nations*, supplemented by acquaintance with older texts, made of him an economic non-conformist. Unchecked by the academic atavism of Dugald Stewart (whose "separate course" of lectures on political economy at the University of Edinburgh he attended) or the intellectual timidity of Francis Horner, Lauderdale emancipated himself definitely from "the superstitious worship of Adam Smith's name."

Apart from incisive criticism of Adam Smith's more vulnerable opinions upon value and productivity Lauderdale's important doctrinal contributions were: a well reasoned distinction between "public wealth" and "private riches," including recognition of the elasticity of demand; insistence that land, labor and capital are "all three, original sources of wealth" and "that each has its distinct and separate share" in wealth production; branding of the distinction between "productive" and "improductive" labor as futile; the explanation of capital profit as the "supplanting" of a certain portion of labor; an analysis of debt amortization as injurious to wealth increase; and the view that "a proper distribution of wealth insures the increase of opulence."

Excoriated by Lord Brougham and patronized by McCulloch, Lauderdale's *Inquiry into . . . Public Wealth* was translated into French and Italian and received more favorable recognition from Cossa as well as from Cannan. Prolix in style, fragmentary in exposition, intolerantly critical, his book is important in the development of English and, through Daniel Raymond, of American economic thought, not only as perhaps the most substantial theoretical contribution in the score of years between Malthus' *Essay* and Ricardo's *Principles* but also as the final attempt to construct a theory of production before the later classical school became absorbed in the theory of distribution.

JACOB H. HOLLANDER

Important works: *Thoughts on Finance* (London [1796]; 3rd ed. 1797); *An Inquiry into the Nature and Origin of Public Wealth, and into the Means and Causes of Its Increase* (Edinburgh 1804; 2nd ed. enlarged, 1819); *The Depreciation of the Paper Currency of Great Britain* (London 1812); *A Letter on the Corn Laws* (London 1814).

Consult: McCulloch, John R., *The Literature of Political Economy* (London 1845) p. 15–16; Cossa, Luigi, *Introduzione allo studio dell' economia politica* (3rd ed. Milan 1892), tr. by L. Dyer (London 1893) p. 321–22; Cannan, Edwin, *A History of Theories of Production and Distribution* (3rd ed. London 1924).

LAUNDRY AND DRY CLEANING INDUSTRY. The cleaning of soiled garments is one of the most ancient and homely of tasks. The early methods were washing in a stream or pool or, more elaborately, treading with feet or rubbing with hands in a bowl, drying on a frame and combing of dried woolen fabrics. These cleaning methods still prevail in many parts of the world today. In Rome and in some of the Roman cities during the early empire there were commercial laundries which had yearly contracts for family wash, doing the work by hand at a comparatively low cost; patronage was necessarily limited to the noble and wealthy classes. During the Middle Ages woolen clothes, which were used by the bulk of the population, were occasionally laundered in a rough fashion, although in many

instances garments were worn without washing until they wore out. When cotton came into general use in the latter part of the eighteenth century more careful methods of hand laundering were developed.

Not until well into the nineteenth century, however, was there any radical change from the old custom of hand laundering performed as a separate task in each home. By 1860 there were a few steam laundries in Great Britain and the United States; these increased in number toward the close of the century. The first wash wheel, the prelude to many mechanical appliances necessary for the power laundry industry, was patented in the United States in 1863. Early patronage came from ships and hotels, while the first items relinquished to laundries by housewives were men's shirts and collars, difficult to do at home because of the elaborate starching required. Laundering in the United States as well as in European countries was until 1915 chiefly a shirt and collar business with a slowly growing family trade. The wet wash service, which washes clothes and returns them damp, was started in New England about 1910 and spread from there to New York and Chicago. Eight years later laundries began to offer in addition to the wet wash a flat work service for a small extra charge and about 1920 came the rough dry service (flat work processed; wearing apparel washed, dried and starched if desired). Today there are seven recognized types of service, representing a considerable range of expensiveness. These services, carefully designed to meet varying requirements, have drawn forth an increasing volume of family bundles.

There was a somewhat similar development in dyeing and dry cleaning. Dye works have existed in the United States for over fifty years; at least two were established much earlier. In the days when a silk dress was sufficiently valuable to be ripped apart, dyed and remade, dyeing was the chief function of such establishments; dry cleaning was taken on later as a side issue. From this minor position in the first decade of the present century dry cleaning has grown to one of complete dominance and today accounts for about 95 percent of the total volume of the dyeing and cleaning business.

Expansion in the laundry and dry cleaning industry was accompanied by mechanization and specialization of processes. The ironing of one shirt may now be accomplished by a half dozen machines and as many as ten persons. Dry cleaning, formerly a matter of swishing a garment in a tub of gasoline, has become a process of "watching dials and regulating valves, stills, centrifugal machines and motors." The consequent improvement in service and lowering of prices has resulted particularly since the turn of the twentieth century in an extraordinary growth of business. Receipts for work done by power laundries reporting to the United States Bureau of the Census (excluding "hand" laundries even though they use some power equipment) rose from $104,680,000 in 1909 to $541,158,000 in 1929 (excluding in 1929 establishments doing less than $5000 annual business). Recognition by the United States government for cleaning of army clothing and bedding during the war gave a great stimulus to the cleaning and dyeing industry; receipts from establishments using mechanical power reporting to the Census Bureau (excluding pressing and tailor shops) rose from $53,183,000 in 1919 to $201,255,000 in 1929 (excluding in both years establishments doing a business of less than $5000). These figures are an underestimate, as at least one seventh of the laundries and even more of the cleaning and dyeing establishments failed to make census reports. The minimum of $742,000,000 spent in 1929 for cleaning, dyeing and laundry work, equal to more than one tenth of expenditures on the purchase and operation of privately owned automobiles, indicates the scope of the industry and the impressive change in the habits of consumers.

Outside the United States the highest development has been achieved in Great Britain, where the value of work done by power laundries and cleaning and dyeing establishments combined (including a few hand laundries) rose from £9,380,000 in 1907 to £21,050,000 in 1924 (including Ireland in the former year and excluding the Irish Free State in the latter; the value of work done in the Irish Free State in 1926 was only £470,000). In Canada a total business of $16,353,000 was done by steam laundries in 1929; in the same year the business of cleaning and dyeing establishments amounted to $6,689,000. In Great Britain cooperative laundering—an outgrowth of cooperative societies formed for other purposes—is of some importance, such laundries handling approximately 5 percent of the total laundry business.

In continental European countries there are some commercial laundries and dry cleaning establishments but the amount of work performed by them is, even relatively, much smaller than in the United States and Great Britain.

The great majority of housewives still do their laundry work in the home, with the exception of a small volume of shirts and collars. Wage earning families, because of limited income, are unable to patronize laundries; middle class families do not send clothing out but employ women to come to their homes, paying for such services according to the low scale of wages for domestics. In the large cities some apartment houses provide special rooms and equipment for the residents' laundry activities. Customers of laundries are therefore chiefly hotels, restaurants, hospitals and other institutions. In Germany, however, the industry is of considerable importance, the value of the work done by power laundries amounting to 135,000,000 marks in 1929. Some indication of the scope of the laundry and cleaning business in foreign countries is afforded by their imports of American laundry and dry cleaning machinery and equipment; 71 countries imported $3,418,759 worth of such machinery in 1930, $1,241,000 going to the United Kingdom, $669,000 to Canada and $515,000 to Germany.

The laundry and dry cleaning industry is composed of essentially small scale enterprises because of the character of the service and the recent rapid expansion, which attracted many petty entrepreneurs. This is particularly true in Europe, where the majority of laundry and dry cleaning establishments are in the hands of small individual owners. In the United States, however, the tendency is increasingly toward corporate ownership. In 1919, 60 percent of the total volume of power laundry business was done in plants of corporate enterprises, and the proportion rose to 74 percent in 1929. The individual owner in the dyeing and cleaning business, on the other hand, remains relatively stronger: only 51 percent of the business in 1919 and 56 percent in 1929 were done by corporate establishments. The corporate units, it is true, are not very large but there is a distinct trend toward concentration and combination. This is apparent in the increasingly large size of plants, a development which is more marked in laundries than in dyeing and cleaning establishments. The increase in the number of cleaning and dyeing establishments has more nearly kept pace with the increase in horse power used and wages paid than in the case of laundry plants, indicating more small competing establishments than in the power laundry business. Nevertheless, concentration is increasing in both branches of the industry. The percentage of total business done by establishments having an annual volume of less than $20,000 has decreased, while that done by establishments with an annual volume of over $100,000 has increased substantially; the latter figure in 1929 was 64 percent for laundries and 40 percent for cleaning and dyeing establishments.

Despite the trend toward large establishments and concentration of ownership many small shops persist, particularly the so-called hand laundries and press shops, which are not enumerated in the census and which are important especially in the larger cities. These small, highly competitive establishments, located at accessible points in residential districts, serve as feeders for power plants; they receive soiled clothing, which is then sorted and marked, sent on to power laundries for washing and returned to the hand laundries for varying degrees of finishing. Similarly wholesale dry cleaning plants send trucks to collect clothes left at press shops; the clothes are cleaned at the plant and in most cases returned rough dry to the press shops, where the pressing and finishing are completed. It is estimated in the trade that there are about twenty press shops for every central cleaning establishment. The Chinese laundries are the only ones in America which do any extensive laundering by hand. In England, on the contrary, the cleaning and dyeing and laundry plants deal direct with their customers. In other European countries the number of hand laundries and press shops is relatively small because the amount of family trade is limited.

The development of the laundry industry has been closely linked with technical improvements in the manufacture of textiles. Research in textiles and chemicals has constituted a major part of the program of the American trade associations, the chief evidence being the $750,000 plant at Joliet, Illinois, which houses the American Institute of Laundering, and the National Association Institute of Dyeing and Cleaning at Silver Springs, Maryland. These institutes conduct chemical and engineering research, operate commercial proving plants and vocational training schools and solicit cooperation from textile manufacturers. The British Launderers' Research Association looks forward to the establishment of a similar research institute. Substantial improvement in the quality of textiles has resulted from the laundry industry's research work, which has disclosed laundering difficulties due to loose weaves, unevenness in quality of filling threads and yarns, poor dyes,

chemicals used in the discharging process of printing color designs and stretching of threads to produce greater yardage; the industry also urges manufacturers and retailers to use its testing facilities.

The transfer from the home to the laundry of a substantial portion of the weekly washing and ironing, facilitated not only by the lower prices of such services but by the increase of women in industry and the comparatively high wages of domestic servants, is in keeping with the trend of other household activities, such as sewing, baking, canning and preserving, from the isolated home to central establishments, where large scale methods can be employed, and is fraught with far reaching social implications. The transition, however, is as yet only in the initial stage. In the United States and Great Britain, the two countries where the industry is most advanced, various estimates show that of the urban business which may be regarded as well within the range of commercial laundries certainly less than 25 percent is now being sent to laundries. In America more than England, where this type of business is specially solicited, women withhold finer articles, such as silks and laces, from the laundry bundle. The larger the community, the larger is the proportion of homes where the family wash is sent to power laundries. Middle class families constitute the most substantial patrons of the laundries: the great majority of working class families are unable to patronize the laundries, while in the highest income groups paid workers do the laundering in the homes. There is rough agreement between size of family income and patronage of laundries and type of service selected, although this is not always the case. The wet wash, the cheapest service, is patronized by the rich, whose servants are willing to iron but refuse to wash the family clothing. A very small proportion of rural homes send work to power laundries, although delivery service is now reaching wider areas than formerly. Per capita consumption of dry cleaning apparently varies widely with the section of the country; it is negligible in the rural districts and is highest in the medium sized and large cities of the middle west.

The countermovement to commercial service, the introduction of washing machines into the home, appears to be an anomalous reversal of this trend toward simplification of the housewife's tasks. One estimate is that 35 percent of the electricity consuming families of the United States owned electric washing machines as of January 1, 1931; 810,000 electric washing machines were sold in 1928, 1,019,000 in 1929, and 802,000 in 1930. In farming communities more families own some kind of washing machine than use the services of commercial laundries.

Shifting of laundry work from the individual home to central plants raises new questions of sanitation for the consumer and for the community. Much prejudice against the commercial laundry has rested upon the aversion to having one's personal clothing washed in the same waters with those of the general public. A number of investigations by impartial authorities indicate that the only difficulties arise from use of improper frame houses not suited for the work (typical of earlier days but less frequently used now), from packing too tightly the loose nets in which clothes of one type from one family are washed (practised only in the poorer grade laundries), from improper handling of clean clothes in juxtaposition to incoming soiled clothing and from the personal danger of infection to sorters and markers, who must handle the incoming garments. It has been well established that the temperatures and processes through which clothes pass in a modern commercial laundry are sufficient to destroy the most virulent bacteria and that clothes emerge absolutely sterile. In a well equipped modern laundry the receiving and marking room is kept entirely separate from the rest of the laundry, and workers there are protected by enveloping aprons and gloves. In the hand laundries, however, the clothing may be subject to reinfection after washing because inadequate drying and ironing space sometimes encroaches on crowded living quarters attached to the establishment and because clean and soiled clothing are sometimes handled over the same counters. In a report made by an officer of the New York City Department of Health in 1917 the Chinese hand laundries in New York City were found to be far cleaner in this respect than the "hand" laundries operated by white persons. Since 1905 France has required that incoming bags of soiled linen shall be disinfected before being touched by the workers; in the United States, however, attempts to require disinfection of incoming laundry before handling by the workers have been effectively opposed by the laundry owners, who claim that the expense would be prohibitive. American commercial laundries refuse to accept clothing from homes where a contagious disease is placarded and unusually filthy clothing is sometimes returned or burned and paid for

instead of being washed. There is considerable difference between the practise of the best and the worst laundries with respect to scrupulousness of handling and general standards, and the laundry industry itself is attempting to certify those laundries which have satisfactory standards.

The laundry industry in the United States, according to the 1929 Census of Manufactures, employs over 230,000 wage earners, a twofold increase over 1909, and the dyeing and cleaning industry employs 60,000, a threefold increase over 1919. Despite the introduction of machinery a great portion of the work requires but limited training and skill. The sorting, folding and even ironing of the clothing is relatively easy work. The substances handled and the processes accomplished are but partially changed from home methods and thus women from the home readily adapt themselves to the work. Because laundering is a service industry, laundry plants are widely distributed, thus utilizing surplus labor in all areas and prohibiting the concentration of workers in a particular region. All these factors contribute to determine the type of labor force. Women of advancing years knowing no other work than that of the home or unable to perform more difficult tasks are able to find laundry work near their homes. In 1929, 67 percent of the wage earners were women, a decrease from 71 percent in 1919. Negro women because of custom and lack of training and opportunity are especially barred from many other occupations and as a consequence constitute over 25 percent of the laundry workers; they receive considerably lower wages than white women workers. Female labor also predominates in Europe.

The competitive disadvantages of the workers, the decentralization of the industry and the physical nature of the work combine to produce and perpetuate many unsatisfactory working conditions, although there have been some improvements. Work in the wash rooms, often concentrated in the early days of the week, is done largely by men, is very heavy and is usually performed in high temperatures and great humidity. These conditions may result in cardiac strain with serious results. The ironers are for the most part women, and there is a tendency for their work to be concentrated later in the week after washing and drying are completed; here the excessive temperature and humidity give a predisposition to atrophic condition, conjunctivitis, dizziness and headache. It has been found that the long hours of standing, the working of treadle machines and the carrying of heavy stacks of clothes are conducive to flat foot and varicose veins.

In the cleaning and dyeing industry somewhat greater skill is required for work such as pressing of fine silk dresses. Women have constituted a considerably smaller fraction of the total wage earners than in the laundry industry: 44 percent in 1919 and 39 percent in 1929. In general, however, the factors operative in the laundry industry apply here as well. Occupational hazards in the dry cleaning industry include toxicity of solvents used (although practical appliances have greatly reduced possible dangers), injury from certain chemicals necessitating cautious handling, lesions of the skin resulting from dyes and discomforts arising from heat, odors and steam in the pressing rooms.

Wages paid to laundry workers are low and inadequate. Median annual wages for women laundry workers in New York state were $769 in 1926. In 1928 a large sample studied by the Department of Labor showed median weekly wages for the United States to be $14.65 for all women workers, $16.10 for white women workers and $8.85 for Negro women. These are among the lowest wages paid to any industrial group. Not only are the actual and potential supplies of laundry workers large but the nature of the demand for the service also contributes to perpetuate low wages. Since the great growth of the laundry industry has been based on removing the washing from the home, the price factor is a very vital one; the wage bill constitutes a large portion of the cost of operation and must be kept low if the housewife is to be induced to send her washing out.

In the absence of state regulation the hours of work in laundries have been long. But since it is customary for states to exercise some control over the hours worked by women and since women constitute such a large proportion of laundry workers, protection is provided for most laundry workers. Nevertheless, hours of work scheduled are usually about the maximum permitted by law and the hours worked are longer than in most occupations in which women are extensively employed. The United States Women's Bureau found that in 1927–28 the most common schedule for women was 48 hours per week (34.8 percent) but that 51.6 percent worked over 48 hours and 13.7 percent over 54.

Unionization has not been extensive either among the laundry workers or among the clean-

ers and dyers. In the dry cleaning industry unions have been organized only in a few of the larger cities. Some of the locals are affiliated directly with the American Federation of Labor, while others are under the jurisdiction of the Laundry Workers' International Union or the Journeymen Tailors' Union; the former union, affiliated with the American Federation of Labor, reports a nominal membership of some 6000. Certain radical groups have taken some steps toward organizing the industry but the results have not been noteworthy. Collective bargaining is almost non-existent. In New York City, however, the Cleaners and Dyers Board of Trade and two unions formed in 1932 a conference board to minimize disputes, composed of representatives from the various factors in the industry with an outside chairman. Strikes are rather frequent and usually bitterly contested but do not result in permanent organization. The large proportion of women and Negro workers, the unskilled character of the work, the decentralized and competitive nature of the industry, all these factors spell defeat for unionism. This condition prevails also in Europe; thus in Germany in 1929 approximately 25 percent of the laundry workers were organized, but the proportion declined to 5 percent three years later.

In contrast to the weak state of organization among the workers the employers are comparatively well organized. An association of laundry owners was organized as early as 1880 in Lawrence, Massachusetts. In 1929 there were thirty-three state and interstate associations of employers in addition to many local boards of trade or associations, as they are variously called. They perform the usual functions of trade associations; primarily they act together to influence legislation, oppose organized labor and subsidize research on technical problems of the industry. Occasionally the associations promote cooperative advertising campaigns; thus in 1927 the Laundryowners' National Association of the United States and Canada launched a $5,000,000 campaign which continued until March, 1932. The National Association of Dyers and Cleaners of the United States and Canada has engaged on a somewhat smaller scale in activities similar to those of the organized laundry owners. In Great Britain the National Federation of Launderers holds annual congresses, fosters an allied research association and promotes an educational movement within the industry. Similar associations exist on the continent, but they are much less developed than in the United States; thus in Germany in 1929 the Deutscher Wäscherei Verband had only 1500 members for 7000 laundries.

Although the employers' associations are largely successful in their efforts to combat unionism they have been unable to crush the racketeering which exploits the American laundry and dry cleaning industry. The product of the industry is a renovating service rather than a physical value added to a raw material; it has a high proportion of direct costs; and it is more closely subject to direct requirements of ultimate consumers than most industries, with consequent scattering of establishments throughout the entire country to serve local groups of customers. High direct costs, lack of the steadying influence of a market from which raw materials are bought and the small size of the many scattered establishments make the industry a likely field for cut-throat competition and its American concomitant, racketeering. Price wars and fights for patronage in many large cities, especially Chicago and New York, have been accompanied by bombing of undefended delivery wagons, an important part of the capital equipment, and other forms of terrorism. A combination of racketeering labor unions, retailers' unions and wholesalers' unions in Chicago maintained prices and divided patronage, until an independent cleaner failing to receive aid from the state hired a notorious gangster to protect his business—and intrenched racketeering more securely in the industry. In other cities tribute from outside the industry is also exacted; laundry and cleaning shops, especially those owned by independent foreigners, are terrorized into making regular payments to racketeers for "protection," the alternative being violence and other forms of intimidation which end in submission or destruction of the recalcitrant's business. The situation has improved somewhat since 1930, but the fundamental conditions which make racketeering profitable still remain.

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See: HOME ECONOMICS; DOMESTIC SERVICE; WOMEN IN INDUSTRY; SANITATION; RACKETEERING.

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LAURIER, SIR WILFRID (1841–1919), Canadian statesman. Laurier, a descendant of seventeenth century colonists from France, was educated at L'Assomption College and at McGill University, where he studied law. After several years in the provincial legislature of Quebec he entered dominion politics as minister of inland revenue in the Mackenzie government. From 1887 to 1896 Laurier was leader of the Liberal opposition, succeeding Edward Blake. He was prime minister of Canada from 1896 to 1911, an unbroken term of office unequaled before or since, which covered a period of great economic expansion fostered by the government. The aggressive immigration policy of the minister of the interior Clifford Sifton filled the west with settlers of many nationalities, and an overoptimistic railway policy designed to encourage expansion of settlement northward and to link east and west more closely resulted in the construction of the Grand Trunk Pacific and Canadian Northern transcontinental systems. But the special distinction of Laurier, who admired the policies of moderation and orderly reform of Gladstone and the English Whigs and who shared in the main their views on economic and social questions, rests chiefly upon his lifelong work for the conciliation of racial, religious and sectional interests in Canada and of nationalist and imperialist aims. In his early years he fought courageously against the efforts of ultramontane clericals to dominate the public life of his native province and as a disciple of Lacordaire insisted that it was possible to be at once a good Liberal and a good Catholic. He came into office on an issue arising from the federal government's attempt to annul Manitoba's abolition of separate schools for Roman Catholics; he upheld negotiation as against coercion and arranged a compromise assuring the Catholic minority of certain privileges within the framework of the public school system. Despite some early wavering he opposed schemes of imperial federation and aided the steady but unspectacular consolidation of Canadian autonomy while playing an important part in developing the system of cooperation which later took form in the British commonwealth of autonomous nations. As a concession to a wave of imperialist sentiment he dispatched Canadian detachments to participate under imperial control in the Boer War; in later incidents he insisted on Canada's control of its own forces. It was his administration which instituted the system of imperial tariff preferences in 1897. Nevertheless, arguments based ostensibly on his attitude toward national and imperial loyalties contributed largely to the defeat of Laurier's government in the general election of 1911. Laurier's policy of building a modest Canadian navy was attacked both by the Nationalists in Quebec, who wanted no action, and by imperialists, who preferred contributions to the British navy. It was feared moreover that undesirable political and economic effects would follow his reciprocity agreement with the United States. Laurier approved Canada's participation in the World War but opposed conscription; his adherents were defeated on this issue in the general election of 1917.

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LAVAL, FRANÇOIS XAVIER DE (1623–1708), French ecclesiastic and bishop of Quebec from 1674 to 1688. Laval may rightly be called the founder of the Roman Catholic church in Canada and one of its greatest statesmen. He was trained by the Jesuits in France and in 1659 was sent out to New France as apostolic vicar with the functions and powers of a bishop *in partibus infidelium*. Strongly ultramontane in outlook and determined that the church should not be hindered in Canada by the Gallican influences then gaining control in France, he successfully urged the establishment of the bishopric of Quebec as an immediate dependency of the Holy See rather than of the archbishop of Rouen. Although he was unable to frustrate the triumph of the temporal power in New France, he did succeed in protecting the Canadian church itself from the Gallican influences prevalent in the mother country. This stimulated the growth of an independent French Canadian nationalism, which became a force to be reckoned with under British rule. By making the church directly dependent upon the Papal See and by giving unity to the ecclesiastical forces Laval undoubtedly did more than any other to further ecclesiastical control in Quebec. His efforts in the interest of education and a more enlightened treatment of the natives were essentially an outgrowth of his struggle for ecclesiastical supremacy. He was responsible for the founding in 1663 of the Seminary of Quebec, now Laval University, and of a preparatory school for boys in 1668. He also encouraged elementary education, so that by 1685 nineteen educational institutions had been established. Laval's zeal for the spiritual and material welfare of the Indians led him into frequent clashes with the local secular authorities. Both by legislative measures and by excommunication he sought to restrain the traders, especially in their sale of brandy to the natives. Although the liquor trade could not be suppressed, the general principles which were enunciated by Laval laid the foundations of Canadian legislation for the protection of the Indians.

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LAVELEYE, ÉMILE LOUIS VICTOR DE (1822–92), Belgian economist, political scientist and historian. Laveleye studied philosophy at the University of Louvain and law at the University of Ghent; in the latter institution he came under the influence of François Huet, the French apostle of "liberal Catholicism." Laveleye was already well known as an economist and essayist when in 1864 he was called to the professorship of political economy at the University of Liége, a position which he filled until his death.

Laveleye's economic views were fundamentally those of the socialists of the chair. Actuated by ethical considerations, he turned from the realm of pure theory to that of social reform. He refuted the theory, current at the time, of the immutability of private property and established the evolutionary character of the institution of property. Essentially a believer in individual initiative and private enterprise, he stressed the social responsibilities of property, was clearly conscious of the social dangers of excessive individualism and in his famous polemic with Herbert Spencer vigorously asserted the right of the state to intervene wherever private interests seem to run counter to the interests of society. He remained a convinced bimetallist even after the failure of the international monetary conferences. Although free trade was the accepted theory at the time, he never subscribed to it entirely.

In the realm of political science Laveleye's interest centered in the problem of democracy. His *Le gouvernement dans la démocratie* (2 vols., Paris 1891; 2nd ed. 1892), which has been sometimes compared to Montesquieu's *Esprit des lois*, is both a study of and plea for the democratic form of government. An ardent Christian and an admirer of democracy, he identified "true" Christianity with "true" democracy and ascribed the resurgence of the democratic spirit in the modern era to the renaissance of true Christianity as expressed in the Protestant revolt.

While he unqualifiedly believed in the superiority of democracy over any other form of government he clearly realized the incompatibility of political equality with economic inequality and regarded a more equitable distribution of wealth as an essential prerequisite to the effective functioning of democracy.

Laveleye's mind was of encyclopaedic scope. He wrote widely on socialism, contemporary political problems and international law. After the Franco-Prussian War he studied carefully the causes of war and advocated arbitration of international disputes. He was a convert to Protestantism and wrote a number of articles in which he attempted to prove the superiority of Protestant over Catholic nations. His letters and the various accounts of his travels are also noteworthy.

Laveleye played no active part in the political life of his country; nevertheless, his democratic and liberal ideas had an enormous influence upon the people of his time.

ERNEST MAHAIM

Important works: *Études historiques et critiques sur le principe et les conséquences de la liberté du commerce international* (Paris 1857); *De la propriété et de ses formes primitives* (Paris 1874, 5th ed. 1901), tr. by G. R. L. Marriott (London 1878), and tr. into German with supplementary material by Karl Bücher as *Das Ureigenthum* (Leipsic 1879); *Des causes actuelles de guerre en Europe et de l'arbitrage* (Paris 1873), tr. as "On the Causes of War . . . " in *Cobden Club Essays, Second Series* (London 1872) p. 1–55; *Le socialisme contemporain* (Brussels 1880, 10th ed. Paris 1896), tr. by G. H. Orpen (London 1884); *Éléments d'économie politique* (Paris 1882, 6th ed. 1898), tr. by A. W. Pollard with introduction by F. W. Taussig (New York 1884); *La Prusse et l'Autriche depuis Sadowa*, 2 vols. (Paris 1870); *La péninsule des Balkans*, 2 vols. (Brussels 1886); *La monnaie et le bimétallisme international* (Paris 1891, 2nd ed. 1891); *Essais et études*, 3 vols. (Paris 1894–97); *Lettres intimes* (Brussels 1927).

Consult: Ernest Mahaim, in *Revue d'économie politique*, vol. vi (1892) 93–101; Goblet d'Alviella, A. J., "Émile de Laveleye, sa vie, son oeuvre" in Académie Royale de Belgique, *Annuaire* (1895) 45–246, with bibliography.

LAVERGNE, LOUIS-GABRIEL LÉONCE DE (1809–80), French economist and politician. After directing the *Journal de Toulouse* and teaching literature at the University of Montpellier Lavergne went to Paris in 1840 as Charles de Rémusat's *chef de cabinet* in the Ministry of the Interior. In 1844 he became an official in the Ministry of Foreign Affairs under Guizot and in 1846 he was elected to the Chamber of Deputies. His political activity was interrupted by the Revolution of 1848 and was not resumed during the Second Empire. He was elected to the National Assembly as an Orleanist in 1871 but, convinced that the restoration of monarchy was impossible, he became a leading proponent of the constitution of 1875. Lavergne was made senator for life in 1875, and he stanchly defended the republic when it was threatened on May 16, 1877.

He became interested in agricultural economics while professor at the Institut Agronomique at Versailles from 1850 to 1852 and is important chiefly as an innovator in developing the separate study of the economic structure of agricultural life. His vivid descriptions of contemporary rural economy in Great Britain and France are based on sound statistical data, regional and geographical investigations and historical method; and his discussions of the theory of gross income in agriculture led to the development of new accounting methods in that field. Lavergne was also interested in population questions and banking.

HENRI SÉE

Important works: *Essai sur l'économie rurale de l'Angleterre, de l'Écosse et de l'Irlande* (Paris 1854, 4th ed. 1863), English translation (Edinburgh 1855); *Économie rurale de la France depuis 1789* (Paris 1860, 4th ed. 1877); *L'agriculture et la population* (Paris 1857, 2nd ed. 1865); *Les assemblées provinciales sous Louis XVI* (Paris 1864); *Les économistes français du dix-huitième siècle* (Paris 1870).

Consult: Cartier, Ernest, in *Revue des deux mondes*, vol. xx (1904) 825–61.

LAVISSE, ERNEST (1842–1922), French historian. Deeply impressed by the French defeat of 1871, Lavisse, who six years earlier had completed with unusual distinction his studies at the École Normale Supérieure in Paris, went to Berlin, where over a period of four years (1871–75) he devoted himself to an intensive study of German history and government. After finishing his doctoral thesis, *Étude . . . ou la Marche de Brandenbourg sous la dynastie ascanienne* (Paris 1875), he returned to Paris and at the École Normale (1878) and later at the Sorbonne acquired an ever mounting reputation as educator and historian. At the end of his career he was director of the École Normale Supérieure. His interest in German history, which persisted actively until 1893, was concentrated on three great epochs: the Middle Ages, the age of Frederick the Great and the nineteenth century. His delineation of the Prussian king in *La jeunesse du grand Frédéric* (Paris 1891, new ed. 1916) and *Le grand Frédéric avant l'avènement* (Paris

1893) won for Lavisse election to the Academy in 1892 and has become a classic of French historical literature. His writings on nineteenth century Germany include *Essais sur l'Allemagne impériale* (Paris 1887), *Trois empereurs d'Allemagne* (Paris 1888) and *La question d'Alsace-Lorraine* (in collaboration with C. Pfister, Paris 1918; English translation London 1918). In the realm of French history Lavisse's reputation rests primarily on his editorial enterprise. With Alfred Rambaud he was coeditor, although comparatively inactive, of *Histoire générale du IVe siècle à nos jours* (12 vols., Paris 1892–99). His most significant work in this field was as editor of *Histoire de France depuis les origines jusqu'à la Révolution* (9 vols., Paris 1900–11) and *Histoire de la France contemporaine depuis la Révolution jusqu'à la paix de 1919* (10 vols., Paris 1920–22), constituting essentially a single monumental series which assembled contributions from the foremost historical scholars of France—Vidal de la Blache, Rébelliau, Luchaire, Pfister, Langlois, Pariset, Charléty, Seignobos and others. Lavisse's own contribution to this series, a severe indictment of Louis XIV, is characteristically analytical and synthetic in method and by its unquestioned force and prestige has been a great factor in dissipating the glamour with which Voltaire and Michelet had hedged *le roi soleil*.

PHILIPPE SAGNAC

Consult: Girard, Georges, "Essai de bibliographie de l'oeuvre de M. Ernest Lavisse" in Maison du Livre Français, *Bulletin*, vol. ii (1923) 286–88; Langlois, C. V., in *Revue de France*, vol. v (1922) 471–83; Seignobos, C., in *Revue universitaire*, vol. xxxi (1922) pt. ii, 257–64; Sagnac, P., in *Flambeau*, vol. v, pt. iii (1922) 10–20; Guerlac, O., "Ernest Lavisse, French Historian and Educator" in *South Atlantic Quarterly*, vol. xxii (1923) 23–42; Bécheyras, A., "M. Lavisse, historien du grand siècle" in *Revue critique des idées et des livres*, vol. xxiii (1913) 142–61; Andler, C., "La dernière oeuvre d'Ernest Lavisse" in *Revue de Paris*, vol. xxx (1923) pt. i, p. 303–40.

LAVOISIER, ANTOINE LAURENT (1743–94), French chemist and financial administrator. Lavoisier, the founder of modern chemistry, is important in the history of the social sciences for his economic and statistical writings, in particular for his *De la richesse territoriale du royaume de France*. The son of a lawyer of moderate means, Lavoisier bought in 1768 a share in the farmers' company of indirect taxation and thus shared responsibility for a fiscal system severely condemned by both French and English observers for its exorbitant profits and opposition to the interests of the people. At the same time, however, Lavoisier was influenced by the ideas of the physiocrats and labored for many years on projects which aimed to rehabilitate French agriculture. He successfully conducted an experimental farm and was a leading figure in the committee on agriculture organized by Calonne in 1783. The memorandum of instructions for the deputies of Blois to the Estates General of 1789 drawn up by Lavoisier was also highly liberal and reformist in spirit. During the first years of the revolution Lavoisier served as one of the commissaries of the Treasury, organizing the system of accounting from which dates the real beginning of the French budget. He was executed during the Terror together with the other members of the *Ferme générale*, who were accused of defrauding the state.

De la richesse territoriale . . . de France, which was printed in 1791 by order of the National Assembly, constitutes an extract from a larger work on which Lavoisier had been engaged since 1784 in an effort to complete and verify an analysis of national income undertaken by Dupont de Nemours. Lavoisier's main argument is that the monetary valuation of national income from different sources leads to double counting; that the only method exempt from such difficulties is that based on an estimate of annual consumption, since exports and imports in France balance one another; and that in estimating consumption allowance must be made for the variation in the budgets of different social classes. Thus he estimated that the annual per capita income of the poorest families is from 60 livres to 70 livres, but he set the value of average per capita income at 110 livres, a figure admittedly similar to that of Quesnay in his *Philosophie rurale* (1763). It was derived by Lavoisier from a hypothetical budget for a family of five, in which the father's consumption is valued at 250 livres (an amount equal to the soldier's pay in the French army) and the mother's consumption and the aggregate consumption of the children each at two thirds of the father's. For a population of 25,000,000 he deduced a total consumption income of 2,750,000,000 livres. The net national income, computed by estimating the net revenue in the various branches of agriculture, he put at only 1,200,000,000, of which half goes to the treasury in the form of taxes and the rest constitutes the landowners' rent.

STEPHEN BAUER

Works: *Oeuvres de Lavoisier*, 6 vols. (Paris 1862–93),

of which vol. vi contains all the economic and statistical writings. See also *Statistique agricole et projets de réformes*, ed. by E. Grimaux and G. Schelle (Paris 1894), containing the principal economic and statistical writings of Lavoisier; *Mélanges d'économie politique*, ed. by E. Daire and G. de Molinari, 2 vols. (Paris 1847–48), vol. i, p. 575–607, containing selections from Lavoisier.

Consult: Grimaux, Édouard, *Lavoisier* (Paris 1888); the introductions by E. Grimaux and G. Schelle to their edition of *Statistique agricole*, p. i–lvi; Foster, Mary L., *Life of Lavoisier*, Smith College Monographs, no. i (Northampton, Mass. 1926).

LAVROV, PETR LAVROVICH (1823–1900), Russian social philosopher. Lavrov, the son of a retired colonel, taught higher mathematics at a military academy in St. Petersburg from 1844 to 1866, contributing at the same time to technical, educational and literary publications of a liberal tendency. In the drive on radicals which followed Karakozov's attempt on the life of Alexander II, Lavrov was arrested and eventually banished to the province of Vologda in the north; in exile he wrote the famous "historical letters" (German tr. by S. Dawidow, Berlin 1901; French tr., Paris 1903) which made him very popular with revolutionary youth. In 1870 Lavrov escaped abroad, where he developed into a convinced socialist, continuing to exercise a powerful influence on Russian revolutionary intelligentsia. During the years 1873 to 1876 he edited a socialist review, *Vpered* (Forward), in which he developed the ideology of the "propagandists"; this group, unlike Bakunin and his followers, who preached insurrectionism based on revolutionary mass instincts, believed that the people must be prepared for revolutionary action by political and social education. Later, when the political situation in Russia changed, he edited together with Tikhomirov the organ of the terrorist party, *Narodnaya volya* (People's will, 1883–86). At the same time he continued to write on general sociological and historical questions; among his later works the most important to be mentioned are *Opit istorii misli novago vremeni* (An essay on the history of modern thought, Geneva 1888–94), *Zadachi ponimaniya istorii* (The problems of historical understanding, Moscow 1898) and *Glavneyshie momenti istorii misli* (Principal periods in the history of thought, Moscow 1903).

Immensely erudite, Lavrov drew upon Kant and Comte, Hegel and Feuerbach, Proudhon and Marx, to construct a *Weltanschauung* which he called anthropologism and which is the first and most important system of Russian subjective sociology. The center of this system is the human individuality. Man like his animal ancestors begins with the pursuit of pleasure and the avoidance of pain, with the purely selfish gratification of elementary needs, such as those for food, sexual satisfaction and nervous stimulation; on this basis, however, there develop altruistic effects, such as a sense of justice, mercy and the capacity for self-sacrifice as well as critical thought. Primitive human societies, not essentially different from animal societies, are held together by usages and customs which tend to become fixed and sacred; these constitute culture whose progress toward civilization involves the operation of critical thought. The carrier of critical thought is the intelligentsia; and since progress is achieved at the cost of terrible suffering to mankind it is the duty of every intellectual to repay his debt to humanity by consecrating his life to social ends. The human individuality is the real agent of historical movement; although the course of history is determined by objective forces, the individual acting upon his own interpretation of the historical process, which is in its very nature subjective, sets his own goals and chooses his own means, thereby transforming the objectively inevitable into acts of personal will. Thus originates a subjective notion and ethical appreciation of progress, which Lavrov described as the physical and moral development of personality and the concomitant embodiment of truth and justice in social institutions. Modern socialism, rejecting every religious and metaphysical idea and involving collaboration between the intelligentsia which provides the leadership and the large masses of workmen and peasants, affords the shortest way to this goal; the new society will be based on solidarity just as the capitalistic order is dominated by interest and primitive society is dominated by tradition.

NICHOLAS RUSANOV

Consult: Rusanov, N. S., *Sotsialisti Zapada i Rossii* (The socialists of the west and Russia) (St. Petersburg 1908) p. 200–66; *P. L. Lavrov, Sbornik statey* (P. L. Lavrov, a collection of articles) (Petrograd 1922); Rappoport, C., Introduction to *Historische Briefe*, and Goldsmith, M., bio-bibliographical notice in *Lettres historiques*; Masaryk, T. G., *Zur russischen Geschichts- und Religionsphilosophie*, 2 vols. (Jena 1913), tr. by Eden and Cedar Paul as *The Spirit of Russia*, 2 vols. (London 1919) vol. ii, ch. xv; Hecker, Julius F., *Russian Sociology* (New York 1915) pt. ii, ch. i; Tcheskis, L. A., "La philosophie sociale de Pierre Lavroff" in *Revue de synthèse historique*, vol. xxv (1912) 129–42, 267–85, and vol. xxvi (1913) 64–81.

LAW

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PRIMITIVE. Many historical jurists in contrast with the analytical school have used the term law to include most if not all processes of social control. The term is, however, usually confined to "social control through the systematic application of the force of politically organized society" (Pound). The limited application, more convenient for purposes of sociological analysis and classification, will be adopted in this article; the field of law will therefore be regarded as coterminous with that of organized legal sanctions (*see* SANCTION). The obligations imposed on individuals in societies where there are no legal sanctions will be regarded as matters of custom and convention but not of law; in this sense some simple societies have no law, although all have customs which are supported by sanctions.

The confusion which has resulted in the attempt to apply to preliterate societies the modern distinction between criminal law and civil law can be avoided by making instead the distinction between the law of public delicts and the law of private delicts. In any society a deed is a public delict if its occurrence normally leads to an organized and regular procedure by the whole community or by the constituted representatives of social authority which results in the fixing of responsibility upon some person within the community and the infliction by the community or by its representatives of some hurt or punishment upon the responsible person. This procedure, which may be called the penal sanction, is in its basic form a reaction by the community against an action of one of its own members which offends some strong and definite moral sentiment and thus produces a condition of social dysphoria. The immediate function of the reaction is to give expression to a collective feeling of moral indignation and so to restore the social euphoria. Its ultimate function is to maintain the moral sentiment in question at the requisite degree of strength in the individuals who constitute the community.

Comparatively little precise information is available concerning penal sanctions in preliterate societies. Among the actions which are known to be treated as public delicts in the simpler societies are incest—marriage or sexual congress with persons with whom such relations are forbidden; sorcery, or evil magic, by one person against another within the community; repeated breaches of tribal custom; and various forms of sacrilege. In many preliterate societies the penal sanction is applied principally if not solely to actions which infringe upon customs regarded by the community as sacred, so that the sanction itself may almost be regarded as a special form of ritual sanction. Ritual sanctions are derived from the belief that certain actions or events render an individual or a group ritually unclean, or polluted, so that some specific action is required to remove the pollution. In many examples of penal sanction it may plausibly be held that a deed such as incest produces a pollution of the whole community within which it occurs and that the punishment, which may mean the killing of the guilty persons, is a means of cleansing the community. Upon the establishment of a political or executive authority even of the

simplest kind disobedience of that authority's commands may be subject to penal sanctions and treated as a public delict; moreover direct offenses against the constituted authority or against the persons in whom that authority rests may be subject to penal sanctions. Thus when the social authority rests in chiefs, an offense which would be a private delict if committed against a commoner may be treated as a public delict when committed against a chief.

In the procedure of a law of private delicts a person or a body of persons that has suffered some injury, loss or damage by infringement of recognized rights appeals to a constituted judicial authority, who declares some other person or body of persons within the community to be responsible and rules that the defendant shall give satisfaction to the plaintiff, such satisfaction frequently taking the form of the payment of an indemnity or damages. A private delict is thus an action which is subject to what may be called a restitutive sanction. The law of private delicts in preliterate societies corresponds to the civil law of modern times. There are, however, certain important differences. In general in modern law actions which fall simply under civil law are those which cause damage but are not subject to reprobation. Consequently although the civil sanction expressed through the payment of damages causes loss to the defendant, it is not specifically punitive. Even in modern civil law, however, a magistrate may in special instances award "punitive damages" thereby expressing the view that the injury committed is of such a kind as to be properly subject to reprobation and therefore to punishment. In modern law when a deed is an offense against morality and at the same time inflicts injury it may become actionable under both criminal and civil law. The emphasis in the punishment for homicide or theft is on its aspect as an offense against the community rather than on the principle that restitution should be made to those who have suffered by the deed.

In preliterate societies private delicts are for the most part killing, wounding, theft, adultery and failure to pay debts; and while they are primarily regarded as constituting an injury to some member of the community they are subject also to moral reprobation as antisocial actions. The sanction is frequently both restitutive and repressive, giving satisfaction to the injured person and inflicting punishment upon the person responsible for the injury; for example, in some African tribes a thief is required to restore to the person whom he has robbed double the value of what he has taken. In its basic form the law of private delicts is a procedure for avoiding or relieving the social dysphoria which results from conflicts within a community. An offense committed against another member or group of the same community by inflicting a sense of injury upon the victim creates a disturbance of the social life which ceases only when satisfaction is rendered to the injured person or persons. Thus in African native law a judge is not regarded as having properly settled a case until all parties concerned are satisfied with the settlement.

The distinction between public delicts and private delicts illustrates the fact that the law has no single origin. A deed committed by a member of the community which offends the moral sense of the community may be subject to three sanctions: the general or diffuse moral sanction, which makes the guilty person subject to the reprobation of his fellows; the ritual sanction, which produces in the guilty person a condition of ritual uncleanness that constitutes a danger to himself and to those with whom he is in contact—in such cases custom may require him to undergo ritual purification or expiation or it may be believed that as a result of his sin he will fall ill and die; the penal sanction, whereby the community through certain persons acting as its constituted judicial authorities inflicts punishment on the guilty person, which may be regarded either as a collective expression of the moral indignation aroused by the deed or as a means of removing the ritual pollution resulting from the deed by imposing an expiation upon the guilty person or as both.

On the other hand, an action which constitutes an infringement of the rights of a person or group of persons may lead to retaliation on the part of the injured against the person or group responsible for the injury. When such acts of retaliation are recognized by custom as justifiable and are subject to a customary regulation of procedure, various forms of retaliatory sanctions may be said to prevail. In preliterate society generally warfare has such a sanction; the waging of war is in some communities, as among the Australian hordes, normally an act of retaliation carried out by one group against another that is held responsible for an injury suffered, and the procedure is regulated by a recognized body of customs which is equivalent to the international law of modern nations. The institution of organized and regulated vengeance

is another example of a retaliatory sanction. The killing of a man, whether intentional or accidental, constitutes an injury to his clan, local community or kindred, for which satisfaction is required. The injured group is regarded as justified in seeking vengeance and there is frequently an obligation on the members of the group to avenge the death. The retaliatory action is regulated by custom; the *lex talionis* requires that the damage inflicted shall be equivalent to the damage suffered and the principle of collective solidarity permits the avengers to kill a person other than the actual murderer, for example, his brother or in some instances any member of his clan. When the institution is completely organized, custom requires the group responsible for the first death to accept the killing of one of their number as an act of justice and to make no further retaliation. Retaliatory sanctions may also appear in relation to injuries of one person by another; for example, the recognized right in certain circumstances of one person to challenge another to fight a duel. Among Australian tribes an individual who has suffered injury from another may by agreement of the elders be given the right to obtain satisfaction by throwing spears or boomerangs at him or by spearing him in a non-vital part of the body, such as the thigh. In all instances of retaliatory sanction there is a customary procedure for satisfying the injured person or group whereby resentment may be expressed, frequently by inflicting hurt upon the person or group responsible for the injury. Where it works effectively the result is to provide an expiation for the offense and to remove the feeling of injury or resentment in the injured person or persons. In many societies retaliation is replaced more or less by a system of indemnities; persons or groups having injured other persons or groups provide satisfaction to the latter by handing over certain valuables. The procedure of providing satisfaction by indemnity is widespread in preliterate societies which have not yet developed a legal system in the narrow sense.

Among the Yurok, who are food gatherers and hunters living in northern California in small villages with no political organization, there is no regular procedure for dealing with offenses against the community and therefore no law of public delicts. Injuries and offenses of one person against another are subject to indemnities regulated by custom; every invasion of privilege or property must be exactly compensated; for the killing of an individual an indemnity or blood money must be paid to the near kin. After a feud or war each side must pay for those who have been killed on the other side. Only the fact and amount of damage are considered; never the question of intent, malice, negligence or accident. Once an indemnity for an injury has been accepted it is improper for the injured person to harbor any further resentment. As the payment of indemnities is arranged by negotiation between the persons concerned and not by appeal to any judicial authority, the law of private delicts in the strict sense is not present. Among the Ifugao, who cultivate rice on terraced hillsides of northern Luzon in the Philippines and who have no political organization and no system of clans, "society does not punish injuries to itself except as the censure of public opinion is a punishment"; that is, there is no law of public delicts, no actual penal sanction. Nevertheless, a person who practises sorcery against one of his own kin is put to death by his kin; on the other hand, incest between brother and sister, parricide and fratricide are said to go unpunished. It is probable, however, that there are powerful and effective ritual sanctions against these acts. An offense committed by one person against another person or an infringement of the rights of one person by another is the occasion of a conflict between the kindred of the two parties, including relatives through both father and mother to the third or fourth degree. Retaliation by the killing of the offender or sometimes of one of his kin is the regular method of obtaining satisfaction in cases of murder, sorcery, adultery discovered *in flagrante*, refusal to pay an indemnity assessed for injury suffered and persistent and wilful refusal to pay a debt when there is ability to pay. Satisfaction is provided in other cases by the payment of indemnities. There are no judicial authorities before whom disputes may be brought; the negotiations are carried out by a go-between who belongs to neither of the two opposed groups of kindred. Certain persons obtain renown for themselves as successful go-betweens, but such persons have no authority and are not in any sense representatives of the community as a whole. During the controversy the two parties are in a condition of ritual enmity or opposition and when a settlement is reached they join in a peacemaking ceremony. A scale of settlement is recognized by custom and in certain circumstances the payments vary according to the class —wealthy, middle class or poor—to which the group receiving or making payment belongs.

The Ifugao thus have an organized system of justice, which, however, does not constitute a system of law in the narrow sense of the term since there is no judicial authority.

An important step is taken toward the formation of a legal system where there are recognized arbitrators or judges who hear evidence, decide upon responsibility and assess damages; only the existence of some authority with power to enforce the judgments delivered by the judges is then lacking. It has been argued plausibly that in some societies a legal system for dealing with private delicts has grown up in this manner: disputes are brought before arbitrators who declare the custom and apply it to the case before them; such courts of arbitration become established as regular tribunals; and finally there is developed in the society some procedure for enforcing judgments.

A development similar to this is illustrated by the practises of the A-Kamba, A-Kikuyu and A-Theraka, Bantu peoples to the south and southeast of Mount Kenya in east Africa who live in scattered household communities, keep cattle, sheep and goats and grow grain in hand tilled fields. They have no chiefs and are divided into well defined age grades, one of which consists of elders who exercise both priestly and judicial functions. If there is a dispute in which one person believes his rights have been infringed by another, the disputants call together a number of elders of the district or districts in which they live and these constitute a court to hear the case. The court acts primarily as a court of arbitration and as a means of deciding upon the customary principles of justice by which the dispute should be settled; it usually takes no steps to enforce the judgment on the losing party but leaves this task to the claimant. In serious cases, however, when an offense affects the whole community or when the accused is regarded as a habitual and dangerous offender so that public indignation makes the affair one of public concern, the elders can exercise authority to enforce judgment. The usual procedure rests on the ritual powers of the elders; they can pronounce a curse—which is feared as inevitably bringing down supernatural punishment—on a person who refuses to obey a judgment. The killing of a member of one clan by a member of another, whether intentional or accidental, is treated by the court of elders as a private delict and is settled by the payment of an indemnity to the relatives of the victim by the killer and his relatives. The elders also possess limited powers of dealing with public delicts by a procedure known as *kingolle*, or *mwinge*. If a person is held guilty of witchcraft or is regarded as a habitual offender and thus as a public danger, the elders may inflict the punishment of death or may destroy the offender's homestead and expel him from the district. Before such action may be taken elders from remote regions must be called in for consultation and the consent of near relatives of the offender must be obtained.

The Ashanti afford a contrast to the system of the A-Kamba in that they have a well organized law of public delicts, which are designated by a native term which means "things hateful to the tribe." These include murder, suicide, certain sexual offenses including incestuous relations with certain relatives by descent and by marriage, certain forms of abuse, assault and stealing, the invocation of a curse upon a chief, treason, cowardice, witchcraft, the violation of recognized tribal tabus and the breaking of a command of the central authority issued and qualified with an oath. The Ashanti conception of the law is that all such actions are offenses against the sacred or supernatural powers on which the well being of the whole community depends and that unless these offenses are expiated by the punishment of the guilty persons the whole tribe will suffer. The judicial functions belong to the king or chief (the occupant of a sacred stool), before whom the offender is tried. The punishment for the more serious offenses is decapitation, although in certain circumstances the condemned man and his relatives may "buy his head"; that is, pay a redemption price by which his life may be saved. The courts of the chiefs do not concern themselves with private delicts, which are denoted "household cases" and settled by the authority of heads of kinship groups or by negotiation. A dispute concerning a private delict may be brought before the chief indirectly if one of the parties involved swears an oath, which thus makes the dispute a public matter.

While the A-Kamba elders are concerned mainly with private delicts and the Ashanti chiefs with public delicts, there are tribes and nations in Africa and elsewhere in which the central authorities—the chiefs or the king and his representatives—administer both kinds of law, which may always be differentiated by reference to procedure. In the law of private delicts a dispute between persons or groups of persons is brought before the judicial tribunal for settle-

ment; in the law of public delicts the central authority itself and on its own initiative takes action against an offender. Modern criminal law and civil law are directly derived respectively from the law of public delicts and the law of private delicts; but acts which are now regarded as characteristically public delicts, such as murder and theft, are in many preliterate societies treated as private delicts, while the acts which in such societies are most frequently regarded as public delicts are witchcraft, incest and sacrilege.

In its most elementary developments law is intimately bound up with magic and religion; legal sanctions are closely related to ritual sanctions. A full understanding of the beginnings of law in simpler societies can therefore be reached only by a comparative study of whole systems of social sanctions.

A. R. RADCLIFFE-BROWN

GENERAL VIEW OF ANCIENT. The knowledge of the legal life of antiquity possessed by the contemporary world and its relation to that life rest primarily on Roman law. This is true not only of Latin, Germanic and Slavic Europe, whose legal systems are linked with Roman law either through an uninterrupted development or through a later reception, but also of the Anglo-American world, which despite the lack of a reception has maintained a certain spiritual relation with Roman law—a relation that has tended recently to become even closer. The forces that brought about the reception are still operative, although under different forms, in the countries to which the Roman law came. The political factor, which made the unlimited power of the Roman-Byzantine absolute monarchs serve as a worthy exemplar for mediaeval and later western emperors and for the Russian rulers until the downfall of czarism; the religious factor, which found in antiquity a model for the legal system of the Catholic church and even for the Caesaro-papism of the Greek Orthodox churches; the scientific factor, which linked with the first two and finding for a time in Roman law as it was taught in the Italian, French and German universities the ideal juristic system, the *ratio scripta*, brought about a concentration on the study of that law; finally, the economic factor, which made the rising cities and business interests of the later Middle Ages and the Renaissance see in Roman law as the embodiment of the practise of an ancient world empire a useful instrument for their own purposes, all these forces acting together were effective in linking continental Europe to Roman law as to no other system.

This process cannot be explained by the fact that the systematic character of Roman law was particularly attractive to conceptual jurists sensitive to theory nor was it due to a valuable historical, philological or philosophical tradition. To be sure, all emperors (and they were copied by the princelings) loved the glamour which Roman public law had known how to impart to the imperial power; also before the church had created its own canon law it may have wished to emphasize, by placing high value on the *Corpus juris*, the influence exerted by Christianity on the Byzantine law of the Christian imperial period. Again, many a phase in the development of the universities may have been influenced by the real or supposed ancient beauty of the Roman legal system and may have seen in it the *ars boni et aequi*. But the cities, the commercial groups and especially the law practitioner, who had his eye on the practical decision of cases, were interested less in the correctness of the system and the beauty of the whole than in finding a working solution for particular problems. And this solution was offered by the numerous *responsa* of the *Digesta* and the *rescripta* of the *Codex*. This element of appeal must be attributed to the practical intelligence, sobermindedness and objectivity displayed by the Roman jurists in balancing interests against interests in their private law.

This fact is essential for an understanding of the dominance of the Roman law in legal and political life since the Middle Ages. What secured its prominence was not so much its scientific character as its utility. There were of course many whose interest in it was scientific; there were always individual scholars who cherished it in the humanistic spirit as a product of antiquity; there were whole movements that set themselves to differentiate evolutionary strata in this law and to separate classic sources from Justinianian interpolations. The historical jurisprudence of Savigny especially directed attention back to the pure Roman law. But despite the influence of this school jurists have remained interested rather in the contemporary significance of Roman law. This was inevitable as long as the *Corpus juris* was effective law in a large part of Germany. In university teaching and in legal practise the Pandects were decisive, and research was largely of a dogmatic sort. Essentially of course the system was no longer Roman but had been modernized; the casuistry, however, re-

mained Roman and survived in the correctness and usefulness of the individual decisions. The Romans had converted their *jus civile*, at first intended only as the law of a city-state, into a *jus gentium*, or system of world law, and this had maintained its sway over the world for centuries after the collapse of their political world imperium. So strong was the supremacy of the Roman law even in jurisprudence that all other legal traditions of antiquity were thrust into the background. Thus the law of classical Greece, the only other ancient culture that had been generally considered by historians, was ignored. Cicero's dictum concerning the insignificance and even ridiculousness of all non-Roman jurisprudence (*De oratore* I: 44, 197) retained for centuries the validity of a program. And this attitude toward non-Roman law was shared not only by practising lawyers but also by most legal theorists in their teaching and research up into the nineteenth century. Only German legal history under the influence of the historical school managed to free itself from the confines of Roman law.

Not all aspects of Roman law, however, have retained their relevance to the present. Public, criminal and procedural law, following separate roads, have all been strongly nationalized. Private law alone has remained Roman; the other domains of Roman law, no less important historically, were termed antiquities and given over to historians and philologists. Without underestimating the painstaking work done by philologists in a field neglected by jurists it must be admitted that only the scholar trained in the legal discipline can capture completely or even glimpse the spirit of the legal sources. Mommsen managed to perform this feat for Roman public law, and along with others he directed juristic interest back to Roman criminal law. Other scholars added to the study of private and public law that of legal procedure, where it was particularly true that every investigation had to proceed along strictly legal-historical lines. And this method passed over to studies in private law. To the dogmatic approach of the lawyer was added the historical approach, inquiring whether the opinion of a given jurist was actually as cited by Justinian or whether it had been changed and interpolated. Although studies in interpolations were pursued by Cujas and Faber as early as the sixteenth century, this sort of research received a new impetus in the nineteenth and grew to a discipline in which radical and conservative tendencies clashed. The new line of inquiry sought to lay bare not only the genuineness of a given passage but also, if there was an interpolation, its authorship and the circumstances under which it had been introduced. For a long time no one doubted that the interpolations were made by Justinian's codifying commissions with the emperor's consent. But then the question arose whether interpolated texts had not even before the time of codification become the basis for teaching in the law schools, especially at Beirut. Although the law teachers would probably not have attempted a direct change in the accepted legal sources without authorization, it is possible that criticism may have been applied to existing law in the course of its formulation. This may have been resorted to either because the laws had become antiquated or ill adapted to the conditions of the Eastern Empire or because of a conflict between the ideas of the constitution of the Western Empire and the Hellenistic customs of the east—the antithesis between imperial law and national, or native, law. Recalling Cicero's arrogant dictum, one can understand in turn how intensely jurists of Greek descent, conscious of the superiority of the Hellenistic to the Roman culture, must have opposed the western imperial law. But one can also appreciate the determination of Justinian to introduce unity and order into the codification and to suppress every outcropping of a *doctrina adulterina*.

Mitteis' pioneer work, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (Leipsic 1891), brought the concept of the Roman *Volksrecht* into current use. Whatever this *Volksrecht* was, it was clearly not Roman law. There was revealed suddenly the variegated, mosaiclike entity that actually functioned as law in the wide expanse of the Roman Empire under the official legal system as expressed in the *Corpus juris*. The Roman world empire included all the states of antiquity and consequently their diverse cultures and legal systems. The question of the interrelation of the various legal cultures of antiquity is far from clear; in fact the issue constitutes the chief problem of ancient legal history.

Foremost among the legal systems of antiquity that demand study are the Greek and Hellenistic, and next to them those of the near eastern cultures, such as the Babylonian, Assyrian and Hittite. Investigations already made in these fields have revealed much of the political, legal, economic and religious life of remote millennia but have thus far failed to establish an

immediate connection between these civilizations and our own culture. Roman law, because of the traditional force of its private law, seems to occupy a unique place in this respect. Only Jewish law, whose theocratic origins give it a place quite apart from all other laws, is still a living law for a widely scattered people. A comparison between the casuistry of the later Jewish law—still little investigated—as revealed in the Talmud and rabbinical literature and that of Roman law would reveal methodological similarities. But on the whole Jewish law has been confined to the Jewish people, a fact which has at once enabled it to preserve its peculiar character and prevented it from becoming a world force.

With respect to Greek law it is now widely held that beyond the formally autonomous legal systems, applying only to the individual city-states, there was a common fund of Greek legal ideas. This can be said without losing sight of the particularistic forces that were at work. There was no *Corpus juris* in which the law was codified. The scattered mass of fragmentary traditions by which students of Greek law are confronted, the necessity of consulting a large non-juristic literature as well as a multitude of inscriptions, and the linguistic difficulty of deciphering the dialects of inscriptions dating from different periods—one need only mention the Laws of Gortyn—attest some of the difficulties that would have been encountered by codification. Nevertheless, the diffusion of Greek law was as wide as that of Greek culture. Rome could not escape its impact: from the time of the Twelve Tables through the republic and principate to the period of absolutism, when the center of the empire was shifted to Byzantium, the influence first of Hellenic and then of Hellenistic law can be traced. In fact it would be a step toward the solution of the problem of interpolation mentioned above in connection with Beirut if it could be established to what extent old Greek statutes were still preserved under the late empire only to be introduced into Roman law. Another pressing problem of research is the investigation as to what elements in Greek law are to be considered an inheritance from pre-Hellenic civilizations in Greece. There is the further problem of whether the relation between Greek and Roman law was as close as was formerly assumed in the attempted construction of a Greco-Italic legal history or whether, as is now believed, it was more remote. And, finally, there looms the vast problem—hitherto rather anxiously avoided—of searching out the Indo-Germanic connections, a problem requiring research in Germanic, Celtic, Iranian and Indian legal studies. There is no lack of detailed monographic attempts to establish the connections.

The center of interest in studies of native law has recently been assumed by Hellenistic law, particularly in Egypt, where numerous Greek papyri have been discovered extending from the period immediately following the reign of Alexander far into that of Arabian power. These will, it is hoped, serve to clarify the problem of the relative importance of oriental and Greek elements which is present in all the phases of Hellenistic culture. The study of these questions requires a knowledge of Egyptian national law, a knowledge which is being applied with good results also in studies in legal history. The Coptic papyri belonging to the later Roman period point to a revival of this national law. In the Arabic period, however, there is a continuance of Roman-Byzantine legal influences, indicating a connection with Islamic law. These documents, which have been preserved for centuries in the hot sands of the desert and which deal with the daily life of Egyptian peasants, Hellenic and Roman officials and the peculiar hybrid Greco-Egyptian population mixture, constitute a history of a thousand years and, if the papyri in the Egyptian demotic and those in Arabic are taken into consideration, of a few additional centuries. It is clear that these papyri possess an immense importance for the knowledge of Egyptian legal life. In reading them one sees how little the life of the ordinary citizen was affected by the fact that his ruler might be a pharaoh or a Ptolemaean or a Roman emperor residing either in Rome or Byzantium. The opportunity offered by these papyri of tracing the effect of Hellenistic, Roman-Byzantine and Arabian foreign rule on so completely closed a country as Egypt makes them of extraordinary importance for our whole evaluation of Hellenistic-Roman antiquity.

Studies of the cuneiform documents, which afford a concrete picture of the legal life of the Babylonians, Assyrians and Hittites, opened for jurists a new chapter in ancient law. For Mesopotamia there exist legal sources going back to the Sumerian period and making it possible to distinguish not only between Babylonian and Assyrian rule but also between different periods within each extending from the end of the third millennium up to the age of the Seleucids, Arsacids and Parthians. The great laws and legal

books—the famous Code of Hammurabi (*c.* 2100 B.C.), the middle Assyrian law book of the fifteenth or fourteenth century B.C., a Hittite law book of the fourteenth century B.C.—as well as a multitude of lesser documents on clay tablets serve as an introduction to the living law of these civilizations. This legal culture is characterized by a strong conservatism and great vigor. Excavations made recently in Dura-Europos, on the eastern rim of Hellenic culture, reveal connections between Greek and oriental legal systems and display certain similarities to the contents of the Roman-Syrian law book of a much later period (fifth century A.D.). Just how strong an influence the Orient exerted on Greek and Roman legal culture is a continually recurring question. In the domain of public law the Roman Empire presented a peculiar type of political organization, unparalleled in Greek and certainly in Germanic civilization. In it the monarchical element was so clearly delimited and was characterized by such solidity and durability that only the oriental monarchy, Hellenized by Alexander, may be considered comparable. It is in this element that despite occasional deflections the characteristic trend of Roman law lies. And just as the Etruscan tinge in the Roman *imperium* shows that Roman statecraft in its beginnings already points to the East, which was probably the original home of the Etruscans, so the new pure form assumed by the *imperium* under Caesar unmistakably has its roots in the oriental-Hellenistic idea of the divine king. By a policy of wise foresight and consideration for the republican sentiments of the West, Augustus slowly but securely paved the way for a similar system.

Thus in the field of public law the program of incorporating the comparative history of ancient legal systems into a unified history of the public law of antiquity may be regarded today as already justified. Whether or perhaps more correctly how far eastern and universal influences may also be traced in Roman private law during the period of the absolute empire, or whether the Roman West here asserted itself more strongly—all these are questions for the future. And whatever the answer to these questions, they constitute the general problem of ancient legal history. It is obvious that no unified legal system was operative in all the Mediterranean countries. That even the *Corpus juris* did not embody such a unity has been sufficiently proved by studies in the field of native law. It is nevertheless true that the *Imperium romanum* represented clearly a political and, at least formally, a legal unity, whose formative factors the legal historian must establish.

LEOPOLD WENGER

EGYPTIAN. The number of legal documents and fragments of laws surviving from pre-Ptolemaic Egypt is so small as to make it impossible either to give an account of the evolution of Egyptian law or to survey systematically the various branches of its jurisprudence. Nevertheless, it is clear that there existed in Egypt from the time of the Old Kingdom (*c.* 3400–2475 B.C.) a highly developed legal culture which was entirely worthy of the esteem in which it was held by Greek philosophers and orators and which was in no way inferior to the contemporary development of the law of the near eastern peoples.

The history of the law of Egypt must today be confined to determining to what extent the great lines of development of general Egyptian cultural history can be traced in Egyptian legal history. Of the first great brilliant period of Egypt, the Old Kingdom, about a dozen legal documents are known. They not only point to a very finely developed law, which must have been recorded already in written form—an inscription of the eighteenth dynasty speaks of the ancient custom (or duty) of the vizier when he sat in judgment to keep the forty rolls of the law open before him—but also indicate that in this period certain typical features of Egyptian law were already given consistent application. There exist from this period contracts of sale, deeds of gift, wills and judgments, which in form and content correspond in many respects to the known characteristics of such documents in later periods. Written forms of pleading seem already to have existed in this remote age. From the available material it may be surmised that the period of the Old Kingdom, in which were developed the basic forms of Egyptian art, was also the period of the origin of Egyptian law.

There are also extant several legal documents from the second brilliant period of Egypt, the Middle Kingdom (*c.* 2160–1788 B.C.), which indicate that the cultural level of the Old Kingdom was once more attained in this era. Nevertheless, the material is insufficient definitely to establish that progress took place. According to questionable assertions of the Greek historian Diodorus one of the kings, Sesostris (Sesoosis), was an important lawgiver of this period.

It is probable that the great pharaohs of the

New Kingdom (1580–712 B.C.), who applied such original and creative ideas to the organization of religion, warfare and administration, were also active in the field of law. But only from the reign of King Harmhab (1350–1315 B.C.), a period in which the political and cultural decline of the New Kingdom had already begun, does there exist a major piece of legislation, relating to extortions by officials. From the period of the dynasty founded by Harmhab and the following dynasty there is extant a greater number of juristic texts. Ever since the death of the great reformer King Ikhnaton (1375–1358 B.C.) the power of the priesthood had been on the increase to the detriment of the secular executive power. To this condition may possibly be attributed the fact that from this period in addition to judgments reached by juristic methods there exist numerous decisions of suits on the basis of a divine oracle. It is not known to what extent the priests were able arbitrarily to influence these oracular decisions; in any case such decisions must have given rise to great legal insecurity. The custom, traceable from about the same period, of avoiding the decision of the oracle by means of well stipulated covenants, which also settle in advance the course of proceedings in any future suit and which from the first are made matters of judicial record, may have been a means of countering this legal insecurity. Oracular decisions may be traced to the last period. But even in the popular courts of secular origin from this time until the Ptolemaic era the priests often took a prominent part. The development of elaborate forms of contract is attributed by Diodorus to the activity of King Bocchoris (718–712 B.C.), with whose reign many historians conclude the New Kingdom.

From the following period, that of the Ethiopian kings, many contracts have been preserved which appear to continue this development. From now on richer material is available, especially in the demotic characters which came into use about 660 B.C. According to these documents of the last period (712–332 B.C.) Egypt again possessed a well developed jurisprudence, which was so powerful that it was not only able to sustain its individuality during periods of foreign domination, especially during the Persian conquest (525–332 B.C.), but was able also to influence strongly the law of immigrating foreigners, as, for example, the Jewish military colonists in Syene. Under the Ptolemies (332–30 B.C.) also Egyptian national law was able to maintain itself on the land (*chora*, thus enchoric law): the demotic documents of the Ptolemaic and early Roman period contain more Egyptian than Greek or newly created law, and even Greek papyri show some Egyptian influence. Even for the Roman period there are traces of Egyptian law, which at that time, however, was definitely declining. In the Byzantine and Arabic periods, however, it was revived in many minor features in the Coptic legal documents.

Several typical characteristics which can be deduced from existing material may be pointed out here. The marked religious tendency of the Egyptians influenced the law, as it did all other fields of culture. The religious conceptions of the Egyptians caused them to place great value on beautiful tombs and on certain sacrifices to the dead. The legal system therefore made the burial of the testator a condition to succession. Only because he had buried the testator might the successor take possession of his fortune. The Egyptian also insured by contract the performance of sacrifices after his death. If for this purpose he made over part of his alienable estate to a priest, the law allowed him to attach to the grant of the property a condition of forfeiture valid in perpetuity. Thus as soon as the priest or his successor in office ceased to offer up the stipulated sacrifices he was to be deprived by the public authorities of the property of the deceased, which should then be given to another. Whether there can be seen in such and similar trusts of property beginnings of the incorporated foundation is, however, still doubtful. Wills appear in the oldest legal documents. If a person dies intestate, the children succeed but in such a way that the oldest son takes precedence. Intestate succession does not, however, appear to have been regulated in the same manner at all periods.

Slavery was known in Egypt but assumed no very harsh form; in any event Egyptian slaves in the last period, to somewhat the same extent as Greek slaves, were held to possess legal personality. Women as well as men appear to have been qualified for business and litigation. Marital property contracts, according to which the property of the wife consists of her dowry and a settlement from the property of the husband, can be traced back into the New Kingdom. The closing of such a contract for the security of the married woman and the children was customary although probably not indispensable to the legal validity of the marriage. Polygamy was rather rare, and after the end of the New Kingdom it probably disappeared. Divorce by the husband

as well as by the wife appears to have presented no difficulties.

There is evidence of private property from the period of the Old Kingdom. The Egyptians possessed an institution closely resembling the land register. There were exact lists of taxpayers, which recorded every plot of land and its owner. In lawsuits this register could be produced as evidence of ownership. At the end of the New Kingdom, when the number of documents increased markedly, there were judicial and temple archives for the preservation of contracts of all kinds. Another method of publishing and thus securing contracts was the placing of a stone inscription in a public place.

The Egyptian legal documents of the last period are usually declarative; the party who has first performed speaks of the legal transfer of the subject of the performance and the obligations assumed by the other party in consequence. A document is employed also in the case of completed cash transactions, when it is usually executed by the party who has transferred the specific property.

Little is known of Egyptian criminal law. The existence of the *lex talionis* is no longer definitely provable. Punishments were very severe but offenders were sometimes allowed to commit suicide. Unfortunately the two greatest records of such criminal trials as are available relate to such exceptional cases—as a trial of a royal harem conspiracy or of tomb robbers—that it would be unsafe to generalize from them as to the normal procedure. More reliable are the ostraca and papyri in hieratic characters which contain the proceedings of criminal trials during the New Kingdom. The sentence is here often pronounced on the basis of a divine oracle.

ERWIN SEIDL

CUNEIFORM. By cuneiform law is meant all laws which make use of the cuneiform script for their written inscription. According to the present status of excavation their geographical scope includes not only the original lands of Babylonian civilization—Babylonia and Assyria—but extends in the east as far as the mountainous Elam region, reaching northward to the Zagros Mountains, while it extends toward the west through Mesopotamia and Asia Minor to Syria and the coast of the Mediterranean. Chronologically cuneiform law begins at least as early as 3000 B.C. with the first interpretable legal inscriptions and continues down to the gradual disappearance of Babylonian civilization during the second and first centuries B.C. It is obvious that there could not have been a uniform legal system covering this vast geographical area and enduring throughout this long period. What we have to deal with is rather a complex of laws of the peoples who settled in the mother countries as well as of those who, located in the surrounding regions, came under the influence of Babylonian civilization. The cuneiform script, however, which was peculiar to Babylonian civilization, may serve as the external criterion of this cultural influence as well as of a certain historical unity; in this connection the Chinese script offers an analogy.

Up to the present time there have been made eleven subdivisions, geographical as well as chronological, in cuneiform law: Sumerian, Old Akkadian, Old Babylonian, Elamitic, Old Assyrian, Middle Babylonian, Middle Assyrian, Hittite, Subaraean, neo-Assyrian and neo-Babylonian. Sumerian law dates from the oldest legal inscriptions to the fall of the last dynasty of Ur about 2200 B.C. The Sumerians were the earliest inhabitants of Babylonia to leave legal inscriptions; they invented cuneiform writing and founded Babylonian culture. Knowledge of Old Akkadian law is limited chiefly to the dynasty of Akkad, about 2700 to 2600 B.C. The Akkadians differed from the Sumerians, whose agglutinative language has made linguistic classification thus far impossible, in that they were Semites who had inhabited northern Babylonia from the earliest known times. Old Babylonian law flourished from 2200 to 1800 B.C. With the downfall of Sumerian rule social changes, resulting probably from the immigration of Semitic tribes from west and north, led to the rise of Semitic dynasties as well as to the absorption of the Sumerians in the Semitic population. The power of Babylonia under the first Babylonian dynasty intensified its cultural influence upon Elam, where legal documents were drawn up in the Akkadian language at about this time. Old Assyrian law developed during the last centuries of the third millennium. While there is no evidence of this law for Assyria itself, there are documents from Assyrian trading colonies in Asia Minor. These colonies were located near Kaisarieh in what was later called Cappadocia, and the documents are therefore called Cappadocian. These extremely difficult texts—legal documents and letters—indicate the existence of a highly developed commerce with Assur. To the present time they have constituted also the chief proofs of the existence of a specific

commercial law in the area of the Near East. This problem, however, requires further research.

The fall of the first Babylonian dynasty, caused by a migration which brought the barbarous mountain people of Kaššu (Cassites) into Babylonia, represented a collapse of civilization. For centuries thereafter sources are lacking; and in the period from 1500 to 1200 B.C., for which sources are once more available, they indicate the emergence of a new world, a renaissance of Babylonian civilization, which for the first time spread visibly through the entire Near East, taking on an international character. In a political system of several rival powers, cuneiform writing became the prevailing script, used even for the recording of foreign idioms, while the Akkadian language became the language of international and diplomatic communication. Hence it is not by chance that there are extant legal records covering the territories of all the powers in existence at the time. There are distinctions between Middle Babylonian law, which shows the Cassites to have been already wholly assimilated by Babylonian culture; Middle Assyrian law, preserved chiefly through documents from Assur; Hittite law, in so far as it can be reconstructed from the documents in the state archives of the capital Hattušaš (Boghaz Keui) in Asia Minor, which were written in the Akkadian and Hittite languages; and Subaraean (Hurrite) law in the documents from Arrapha (Nuzi-Kirkuk) east of Assur written in Akkadian. Although Arrapha was only a small vassal kingdom of the Mitanni Empire, the fourth great power in the Near East, its documents are representative of the law of the latter; for the peoples were of the same race, neither Indo-European nor Semitic.

The great migration which began about 1200 B.C. represents another dark period in the history of Babylonian law. Again there was a change in the population, this time characterized by the penetration of Aramaic tribes, who gradually adapted their primitive forms of life to the Babylonian civilization, which had maintained itself with difficulty in the cities. Toward the close of this period there emerged the neo-Assyrian law (800–700 B.C.), evidenced particularly by finds in Nineveh; Assyria was at that time a world power but toward the end of the seventh century it disintegrated thus disappearing from the history of the world. The following neo-Babylonian period (*c.* 700 B.C. to *c.* 200–100 B.C.) may be considered homogeneous although it includes the domination of the Persians (after 539 B.C.) and that of the Greeks (after 331 B.C.), subsequent to the rule of the native Chaldaean dynasty. As far as it has been possible to observe, foreign rule involved no profound changes in the law. It is true that the vast mass of material covers only a portion of Babylonia, although the clay tablets found in Nerab (near Aleppo) indicate a wider dispersion of neo-Babylonian law. The major competitors of cuneiform writing and of the clay tablet were the Aramaic alphabet and the parchment or papyrus document, which was much better adapted to the latter script. Developing as early as the neo-Assyrian period, it must have spread increasingly among the Aramaic population from the time of the Persians, whose official language was Aramaic, so that during the period of the Seleucids the cuneiform document was used solely in the conservative temple administrations. Together with cuneiform law it disappeared here as well about the end of the second century B.C.

Whether these laws, the number of which may be increased in time through new excavations, are related otherwise than by their common cuneiform script is largely a moot question today. It may be said that the phrases of the Sumerian documents influenced most profoundly those of the Old Akkadian and Old Babylonian texts and that their influence continued to the Cassite period. This influence, however, scarcely extended so far as Elam and Assyria; and the neo-Babylonian documents represent a type concerning whose origin nothing at all is known. The problem of the material interaction of these laws is a much more difficult matter, especially in the field of civil law. With respect to civil law, which is based upon the elementary instincts of man and is conservative in its evolution, comparative law indicates that corresponding development, even in the laws of peoples who came into historical contact with one another, is due to an independent parallel evolution rather than to diffusion, even if diffusion could be evidenced in business forms. Therefore it is for the present hypothetical whether cuneiform law exerted any influence upon the West, particularly upon Greek law, with which it came into contact during the last stage of its evolution.

A history of the evolution of cuneiform law is impossible today, and it is unlikely that it can ever be written. The various known periods are separated by intervals which are poor in sources or for historical reasons possess none at all,

because periods of migration and of cultural decay leave little or no written records. During these periods Babylonian civilization was not destroyed, it is true; it was merely buried. It is to be assumed, however, that the new population had to travel the road from primitive legal conditions to higher forms of law, which made written records necessary. Yet as far as it is possible to compare the various periods with one another there is no continuously ascending line of development. The oldest records do not disclose the primeval status of law, nor do the later periods necessarily evidence a more developed law. Thus the Semitic law of the Old Babylonian period is in many respects more primitive than that of the earlier Sumerian age.

Under these circumstances a comprehensive outline of cuneiform law is possible solely as a comparative description of various legal institutions, to the extent that their juridic structure and their economic and social functions have been discovered. Such work unfortunately has been done only to a slight degree and least of all for the neo-Babylonian legal documents, which have been known longest of all. Hence this outline must necessarily be somewhat incomplete.

The oldest cuneiform records extant are administrative texts—notes upon fields and deliveries of goods. This is true of the archaic clay tablets from Jemdet Nasr, which are still purely pictographic, and of the documents from Uruk, some of which are even older. Thousands of such records, especially those of temple administrations, are the outstanding feature of the Sumerian period as a whole. The oldest juridic records in our possession, however, are stone inscriptions containing lists of deeds to plots of land. At a very early date, at least as early as the Old Babylonian period, there occurs the private business document, such as the so-called case tablet, in which the text is repeated upon the enveloping clay casing with the seals of the witnesses regularly stamped upon it. This double document, which was probably intended to protect the text against forgeries, spread to Assyria, to the Subaraeans, where the outer text was shortened to a heading. It is completely missing in the neo-Babylonian period, but is found in a form adapted to other writing materials in Palestine, in Egypt under the Ptolemies and among the Romans. It is possible that it was borrowed from the Orient, but this cannot be proved. With regard to content the business document always remained an objective protocol before witnesses, who do not appear in the administrative text. The conclusion of the contract was set forth briefly as having already taken place, because the document was not written by the parties to the contract but by professional scribes (*dupsharru*), who were trained in schools. It was in these schools that there developed what may be called cuneiform jurisprudence. Its achievements were chiefly confined to the drawing up of business forms, and only in the neo-Babylonian period did they become more flexible. A proof of this is the Sumero-Akkadian series *ana ittišu*, consisting largely of such forms, which developed in the early Old Babylonian period.

Because of the political configuration of Babylonia in the Sumerian period, when individual cities contested for supremacy, law differed according to the locality. It was city law, although its basic concepts were everywhere the same by reason of the common civilization. Fragments of such Sumerian city laws are still extant. The first and only great code of legislation known to us is the Old Babylonian code of the greatest ruler of the first Babylonian dynasty, Hammurabi. Written in the Akkadian language, it was planned as a legal code for the entire kingdom. It consists of a compilation of older Akkadian and Sumerian laws and tends to strike a balance between the two legal systems. Then there are reforms made by the king—partly in the form of changes or interpolations in the draft code—who here displayed his social viewpoint, for he sympathized with the weak, which sometimes led him to excessive protection of the debtor. He considered himself the *šar mišarim*, the king of equity law, as contrasted with *kettum*, the fixed, rigid law. These concepts, which were evolved as early as the Sumerian period, might be compared with equity and common law. They are, however, theoretical concepts rather than living forces like the latter. It is doubtful whether the code was wholly applied in practise, for it had a certain learned stamp which led to the retention of obsolete legal provisions, as in the primitive rules governing offenses against property which threaten the defeated party with the death penalty. Nevertheless, the influence of this code upon the period must have been tremendous and it was regarded with high esteem as a literary monument in later centuries in Babylonia. A Middle Assyrian collection of court decisions and laws, the latter no doubt largely derived from an urban code of Assur, was probably the work of private individuals who modernized or glossed older laws by later additions. The first tablet, which was a code of laws regarding

women, has been best preserved; it contains provisions regarding marriage law and offenses by and against women. There is some doubt as to the nature of a collection of laws, principally criminal, found in the state archives of Hattušaš and written in the Hittite language. Although this collection, which survives in several editions, consists largely of laws it can scarcely have been published as a code in the form in which it has come down to us. It is rather an official collection of individual laws and decisions for the use of officials of the royal courts. Fragments of legal prescriptions, chiefly regarding marriage and inheritance law, which date from the neo-Babylonian period are of indeterminate nature. To these sources may be added private and official letters, documents connected with the management of private households, temple administrations and to a lesser extent the administration of the government.

These sources deal primarily with civil law or with economic management, such as that of the temples. Only the state archives of Hattušaš and of neo-Assyrian Nineveh furnish any considerable number of documents on governmental law and public administration, so that our knowledge of the state is meager. There is enough information, however, to dispel the widely held belief that the ancient East possessed only the despotic monarchy. This may be true of the Old-Babylonian, neo-Babylonian and neo-Assyrian kings, although a remarkable text makes it the duty of the latter to avoid arbitrariness and to respect the law; it may be true also of the state at the close of the Sumerian period, which had degraded the former city princes (*isag*) to mere officials. Its character is clearly expressed in the deification (which disappeared later) of the king. But even the Old Assyrian rulers seem to have been confronted with a considerable degree of urban autonomy, while the Old Assyrian trading colonies in Asia Minor had a republican form of government. As the state treaties found in Hattušaš show, the Hittite Empire was a federative alliance under the leadership of Hatti, and its rulers were probably linked to the dependent princes through feudal bonds. This was similar to the feudal relationship between the Syrian vassals of this period and the pharaoh, as is evidenced by the Egyptian king's correspondence with them, written in Akkadian and found in El-Amarna in Egypt. Within Hatti itself the king's position was far from absolute, being limited by a powerful aristocracy. The state possessed feudalistic traits, which supposedly also characterized Assyria and Mitanni at this period. As for Babylonia the *kudurru*—phallus shaped stones with inscriptions regarding grants of land which were placed under the protection of the gods, whose symbols are inscribed in the upper half of the stones, or relating the royal grant of privileges to prominent men and families—are also a sign of the weakening of centralized rule. The small fief (*ilku*), consisting of land allocated for the support of soldiers and artisans, must be distinguished from feudalism proper, which appears to have been characteristic of the middle period. The small fief existed in all periods and was marked by a trend toward the gradual transformation of the fief into private property through inheritance and the right of disposal or toward the conversion of the original obligation of service into a tax.

Present day knowledge of the criminal law is derived largely from the criminal provisions of the laws, which are by no means inclusive. The criminal law is an affair of the state, as there is no vestige of private vengeance except in cases of adultery. But it is largely a private criminal law in that punishment is meted out on behalf of the wronged party and not of the state. This is true of fines as well as of corporal punishment, since the latter could be remitted contractually through the payment of a sum of money. In several cases in the Middle Assyrian code of law this is expressly stated and it may have been true to a wider extent. In addition there is the public offense, which is prosecuted by the state; its delimitations require further investigation. The concept of criminal guilt is outlined. The Code of Hammurabi and the Hittite law emphasize the deliberate deed in certain cases and punish it more severely. There existed moreover a concept of guilt over and above such individual cases, but it was thought of objectively. For instance, it was held that the receiver of stolen goods was not a person who knowingly bought stolen property but a person who contracted a purchase secretly, without witnesses. But indications are not lacking in the Code of Hammurabi and particularly in the Middle Assyrian code that the concept of guilt had already begun to be based upon the subjective attitude of the doer, upon his actual knowledge or lack of knowledge. Penalties were graduated according to whether the injured party were a freeman or a slave or according to the rank of the culprit. On the other hand, there was no differentiation as to criminal responsibility, as is indicated most

clearly in the Hittite code. This attitude corresponds to the relatively free position of the slave throughout the Near East; slaves were allowed to marry and to own a limited amount of property. Such leniency was probably due to the small number of private slaves, for the slave problem scarcely existed at all.

The *lex talionis* was the dominating feature in the penalties of the Code of Hammurabi together with the frequent death penalty and the fine, while corporal punishment as a specific penalty was of slight importance. The Hittite code is similar but does not contain the *talio* as a punishment. On the other hand, in Assyrian penal law corporal punishment (mutilation) and whipping play an important part, and in civil law the "bloody penalty" for breach of contract predominates. This and the outspoken description of sexual offenses, for which the refined Code of Hammurabi uses veiled terminology, are as characteristic of the Assyrians as the somewhat complacent admonitions of the Hittite lawgivers for leniency and forbearance are characteristic of the latter. Collective responsibility is of some interest—the liability of the community for the unknown criminal in the Code of Hammurabi and possibly in Hittite and Subaraean law as well and the liability of the criminal's family, which is evidenced in the Hittite code, although even here it is already declining.

Little is known of the civil trial. A large number of Sumerian documents (*di-til-la*) from Lagash in southern Babylonia dating from the last Ur dynasty reveal a fully developed governmental machinery of justice in the hands of the city prince and later a bench of judges. Such a set up accords with the general character of the period. The trial under Old Babylonian law was of a more private nature. The decision of the court was not binding but became so only indirectly, when the parties to the suit submitted to it through a document expressing the renunciation of the complaint (*duppu la ragāmim*). Unless such renunciation was forthcoming suit might be brought again. In addition there evolved an authoritarian jurisdiction of the king and of his officers, who passed final decision upon the disputes brought before them. The material on trials contained in the Old Assyrian, Subaraean and neo-Babylonian texts awaits systematic research.

The family organization of the leading peoples of the Near East was patriarchal, with the father ruling the house. It differed from the Roman patria potestas in that it did not necessarily last throughout his life; nor did it exclude the personal property of members of the family, especially of the wife. Accordingly the monogamous marriage was a marriage by purchase or based upon purchase, although the documents differentiate in phraseology between such a marriage and a purchase. According to Old Babylonian law the bridegroom paid his prospective father-in-law a bride price (*tirhatu*). This was the engagement through which the bridegroom became the "owner of the wife" (*bēl aššatim*) in accordance with the rules governing all buying and selling. The engagement became a marriage when the bride was handed over to the household of the husband or at least when a written marriage contract was drawn up. Thereafter only the husband might dissolve the marriage—the wife, who was merely an object of the marriage contract, had no right of divorce—while the prospective groom could cancel the engagement by surrendering the bride price or by returning it twofold. In Sumerian law, at least during the later period, the bride price was converted into a marriage present to the wife, which served to take care of her in case of widowhood and which later the husband often confirmed as a bequest. Consonant with the wife's improved status was the fact that she could under certain circumstances annul the marriage. According to the *di-til-la* documents marriage might be concluded also before a court. The bride price and the marriage gift are both to be found in the Code of Hammurabi; but the former was probably a result of the influence of Semitic immigrants, who transformed the social composition of the population toward the end of the Sumerian period. Marriage in the Middle Assyrian period seems to have corresponded in status to that under Sumerian law. The engagement no longer consisted of the payment of the bride price but of the presentation of engagement gifts (*zubullū*), while the *tirhatu* became a marriage gift. Little is known of the Hittite marriage. Traces of marriage by abduction are indicated, while, on the other hand, there seems to have existed an engagement corresponding to that in the Code of Hammurabi, comprising the payment of a bride price (*kušata*). Among the Subaraeans marriage was a primitive affair. Not only was a bride price paid with sums fixed by law, but the bride's father like a vender guaranteed the eviction of the bride. For marriage under the neo-Babylonian law further research is needed. The bride price no longer existed, and it is doubtful whether there was a marriage

gift; but the wife's dowry (*nudunnū*) played an important part. This consisted not merely of her marriage outfit (house furnishings) but was ordinarily a capital fund (money, land and slaves) which remained the wife's property and which was inherited by her children after her death. Its proceeds were used by the household and managed by the husband. The *mulugu* of Subaraean law, which often involved the partial return of the bride price, was a similar institution. The Code of Hammurabi provides for a dowry (*šeriktum*) similar to the neo-Babylonian *nudunnū*, whereas, peculiarly enough, only the *nudunnū* is mentioned in the documents, being looked upon rather as merely a marriage outfit.

The Middle Assyrian code provides for a marriage without a common household, in which the wife remained in her father's house and merely received visits from her husband. This marriage form, with freer position of the wife, goes back to a marriage without bride price, which originally made neither the wife nor the children subject to the power of the husband. It exhibits, however, the tendency to approach the patriarchal marriage by purchase. Traces of a peculiar family organization, in which instead of the father the oldest brother presided over the family, are to be found in the second millennium in Armenia, Arrapha and Elam. This "fratriarchal" family is connected with the family community which expects centralized leadership by the most experienced; that is, the oldest. In this case on the death of the head of the family this leadership passes not to his sons but to the younger brother and so on. In part, for example in Elam, the "fratriarchy" can be explained on the basis of an original matriarchal family, in which the brother replaces the father, who remains outside the family (avunculate). At the time of the sources the fratriarchal family is everywhere in the process of being transformed into the patriarchal.

Inheritance was patriarchal also. According to Sumerian law only the son was an heir, since he alone was able to continue the family. The first born son is given preference in south Babylonian law of the Old Babylonian period as well as in Middle Assyrian and Subaraean law. If the estate of a childless testator was handed over to relatives, it was an acquisition of the estate but not an inheritance. Likewise the daughter was excluded from the line of inheritance, and if she did inherit—because of the absence of sons—she was not called the heir; in such a case circumlocutions were employed, as, for example, "successor to the estate," *ridît warkātim* in Old Babylonian law. In neo-Babylonian law the line of inheritance was materialized into a mere acquisition of property; the person "obtaining the estate" was the heir. Under such circumstances the will was of no importance. What is found in the way of testaments belongs under the heading of family law, the testator without a son being able to adopt a son as his heir while still alive or at the time of his death (by *aplūtu*). In addition to this "genuine" adoption, Old Babylonian law provides for a variety of forms of adoption, which involve a mere guardianship relation between the parties rather than inclusion in the family. This was especially true of minors and women. Besides the adoption will there are evidences of parental distribution in all periods, particularly developed as *šīmtu* (provision) in Subaraean law. This distribution of the estate among the family (wife and children) according to the rules of legal inheritance is related to the making of gifts in case of death, which is found in Sumerian and Old Babylonian law as referring to individual gifts and which might involve the entire estate according to neo-Babylonian law, taking the place of the adoption will. Here again, however, distribution usually did not extend beyond the immediate family, and freedom of testamentary disposition did not exist.

Characteristic of Babylonian civilization were the *hieroduloi*, who formed a special caste of temple slaves (*širkū*) in the great temples of the neo-Babylonian period; there were also free *hieroduloi*, including even the king's daughter. More is known concerning the female *hieroduloi* of the Old Babylonian period; these were forbidden to have legitimate children, whether pledged to prostitution or to chastity. The female votary could therefore have no heirs, and the wealth given her by her father at the time of her dedication passed to her brother after her death, unless her father named another as heir or allowed her free disposition of her property. Certain *hieroduloi* were even allowed to marry but were replaced by concubines for the bearing of children. According to Sumerian law, when the wife was sterile, even the children borne the husband by a prostitute were legitimate.

There are various forms of land tenure in cuneiform law. The need for regulating the periodic floods in Babylonia favored the aggregation of men into large units from earliest times. In northern Babylonia clans were the units of political organization and owners of the land in the

Old Akkadian period. In the south the very oldest legal finds indicate the existence of private property, landownership being concentrated in the hands of prominent families, however, especially of the city rulers. In Akkad the clans were deprived of their land by the king partly through purchase and also by the use of force. If we may generalize the course of development in Lagash in southern Babylonia, this process seems to have continued during the subsequent centuries until toward the end of the Sumerian period all land had become the property of temples and of the state. Houses and gardens were privately owned, but not tilled land; this accords with the rather pronounced state socialistic character of the period. The population, ordered in castes according to trades, lived largely for and through the state; state economy was predominant and with it a vast bureaucracy, which also managed the public storehouses. The economic status of the individual seems to have been for the most part poor, as is indicated by the frequent evidence of the sale of children. Nothing is more characteristic of the social transition to the Old Babylonian period than the reappearance of private land tenure. In this period the state also took over an extensive governmental economy from the Sumerians. The predominance of large estates would correspond to the feudalistic nature of the middle period. In fact it is assumed that Babylonia during the Cassite period was characterized by the collective ownership of families possessing political power. It is possible that family communities owning considerable land existed in Middle Assyria, while in Arrapha the evolution of large estates can be followed directly from the documents for various families. But little is known as yet of conditions during the neo-Babylonian period.

Acquisition of private property was chiefly by purchase. Personal property was acquired by transfer, while the purchase of real estate is attested by documents. The same holds true of slaves, cattle and, especially in Babylonia, temple benefices. Purchase was always effected for cash in accordance with certain forms; that is, direct exchange of money for commodities. The purchaser acquired full title as soon as the price was paid. Title became final with the transfer, which might be replaced by the document. The renunciation clauses which are characteristic of the Old Babylonian deeds, especially the clauses affecting the seller, are related to this custom. The sale adoption of Arrapha is peculiar. In order to evade an inalienability of real property, which may have been due to feudal institutions, the seller adopted the buyer and then transferred the land to him as a son by means of *šīmtu*, since inheritance existed, the buyer giving a "present" instead of the cash price in return. According to the older Sumerian, Middle Assyrian and Subaraean law an act of publication was connected with the purchase, which made the transfer of land publicly known and incontestable. The sale was publicly proclaimed by the herald, who stated that third parties who did not make a protest at the time would lose all claims thereafter. Then there occurred another documentary verification, which if carried out before the court made the publication unnecessary in Arrapha. The *kudurru* possibly also performed a publicity function. As a form purchase for cash the transaction could not create any obligations, either for the delivery of the goods or for the payment of the price, nor could it deal with any but separately stated objects. Therefore if the selling price was to be credited, a special credit transaction was necessary. According to the concepts of cuneiform law the sale of bulk commodities, such as grain or wool, was not a sale at all but took the form of a loan or material contract. In other words, if it were a credit sale or a sale by subscription, the buyer declared that he had received the goods, and the seller that he had received the price, both promising equivalent considerations.

The widespread acceptance of the idea that the Babylonians were a trading people requires some reservations. While this may be true of the Old Assyrian period, we have no sources for the Middle period, and the neo-Babylonian period has not been adequately investigated. It is scarcely true of the Sumerian and Old Babylonian periods. This does not mean that there was no trade; but most of the trading was in the hands of the state, and the *tamkarum* so often encountered for this period was not a private merchant but a semigovernmental functionary. The trading company, in the form of the *commenda*, was of lesser importance and rather simple. A capitalist (*ummeānum*) gave his traveling partner capital for a single trading voyage, retaining a claim to the repayment of the capital and to participation in the profits. Credit was undeveloped, being granted only for short terms and repayable as a rule at the next harvest; thus credit was largely agricultural. The chief form of credit transaction was the loan (money or commodity loan, with various rates of interest; in

the Code of Hammurabi the legal maximum interest rate is fixed at 20 percent and 33⅓ percent). As a fictitious loan, separated from the object of the loan, however, it could by virtue of the document incorporate other causes of debt as obligations, such as the mortgaging of a purchase price debt. There was furthermore the obligation note (*i'iltum*), in which the creditor was stated to have capital upon the debtor, which the latter would repay. It is characteristic that this form is rare in the Old Babylonian period, that it dominated the commercial activity of the Old Assyrian period exclusively and that in the neo-Babylonian period it displaced the loan almost entirely. The *i'iltum* was an extremely flexible debt form, a written promise to pay, which might incorporate any cause of debt and which might also appear abstractly, separated from any debt cause. It is comparable to the Roman *stipulatio*, with which it shares a common origin from a warrant of security. To that extent it is an indication of rather active currency circulation.

The securities for a debt were the suretyship and the pledge, the former being especially prevalent in neo-Babylonian law. The terminology of the suretyship involves as in other systems of law a gesture of the hand (handclasp, raising the hand) as the original form of bond, through which the warrantor's liability is pledged with his body. The pledge is in its oldest form always one entitling the creditor to possession and usufruct, the latter covering either the capital and the interest or only the interest. In the latter case the pledge was forfeited if the pledged debt was not repaid; that is, the creditor received final title to the pledge instead of receiving payment of the debt. Hence neither the body nor the property of the debtor was liable for repayment of the debt, in addition to the pledge. The debtor was not obliged to pay the debt but merely entitled to redeem the pledge with the amount loaned. From this point evolution continued, first to the possessionless pledge or mortgage, which was designated as such in Old Babylonian and in Elamitic law and which was marked in Elam by an act of publicity, such as the driving of a pledge post into the pledged piece of land. It is found also in Middle Assyrian, neo-Assyrian and neo-Babylonian law. Then there was the sale pledge, of the conversion of which we know but little. It may be postulated, however, from the agreement for the debtor's personal liability for the debt, which is found in Middle Assyrian, neo-Assyrian and neo-Babylonian law. For the sale pledge must have become of practical importance as soon as the sale indicated that the value of the pledge was less than the amount of the debt. But the older form of pledge persisted. In general pledge law was relatively primitive, and there was scarcely any developed form of land credit. In the documents there are found as pledge objects plots of land as well as persons (slaves and freemen, children, the debtor's wife and even the debtor himself). In the case of freemen the forfeiting of the pledge had originally to result in the enslavement of the pledged person. Apparently the Code of Hammurabi successfully prohibited this. But it still occurs in Old Assyrian law and probably in Middle Assyrian and Subaraean law as well.

The pledging of a freeman as a usufruct pledge to the creditor is a form of exploitation of another's labor power, and the latter must also have been of considerable importance in the form of the free labor contract, in view of the slight extent of slave labor. Proof of this is found in the wage scales for various classes of artisans in the Code of Hammurabi and in the Hittite laws. The documents of the Old Babylonian and neo-Babylonian periods furnish an incomplete picture of conditions, no doubt because a large proportion of free labor was performed for the state and the temples, and this cannot be considered a private labor contract. The form of labor contract was derived from the renting of slaves. There are evidences also of another type in the Old Babylonian period, in which a worker or the foreman of a group of workers received a payment on account of wages, agreeing to come to work, either on his own behalf or on behalf of his comrades. These were seasonal (harvest) laborers, who were held strictly liable for nonfulfilment of the contract in accordance with special laws because of the importance of harvesting. They indicate also the existence of large estates, which required large numbers of outside laborers during the harvest season. Numerous rent and lease contracts dating from the Old Babylonian and neo-Babylonian periods are also extant, but it cannot be proved from the former class of contracts whether a considerable proportion of the urban population lived in rented quarters. The importance of leases is indicated by their detailed regulation in the Code of Hammurabi. They are found in various forms, as interest lease or partial lease, depending upon whether it was plowed land, plantations or land to be made arable. In the neo-Babylonian period

it is found also as a lease in consideration of an impost (*imittu*) upon the lessee, to be fixed at a later date. This was possibly the form of lease for the dependent peasants of temples and large estates. Moreover the leases were made for small plots of land and ordinarily, with the exception of leases for virgin land, covered only the term of a single harvest.

PAUL KOSCHAKER

JEWISH. In any discussion of the Hebrew law of the Biblical period the codified law must be differentiated from the popular or customary law as revealed in the narrative portions of the Bible. The legal ideas and practises revealed in the Biblical stories conformed to the living conditions and environment of the Hebrews of that period. On the other hand, many provisions of the codified law were the expression of religio-ethical standards far in advance of their time and as a result they did not permeate the life of the people until much later. For example, the law requiring the liberation of Jewish slaves after six years of service was not actually observed at the end of the first temple, while the observance of the law regarding the annulment of all debts during the sabbatical year (*shemitah*) met with difficulties even at the time of the second temple. These discrepancies between the religio-ethical principles which formed the motives for these laws and actual legal practise are reflected in the jeremiads of the prophets, who attacked such violations.

The codified Biblical laws according to the period of their composition are usually classified as follows: the Decalogue (*Exodus* XX: 1–17; *Deuteronomy* V: 6–19); the Covenant Code (*Exodus* XX: 23; XXIII: 19; and XXXIV: 17–26); the twelve curses of Mount Ebal (*Deuteronomy* XXVII: 15–26); the Deuteronomic Code (*Deuteronomy* XII–XXVI); the Holiness Code (*Leviticus* XVII–XXVI); and the composite Priestly Code. All that is known historically is the existence of the book of *Deuteronomy* in the Kingdom of Judaea during the reign of Josiah and of the codified laws of the Pentateuch during the period of Nehemiah and Ezra. Many legal prescriptions in all parts of the Bible are, however, extremely ancient, as is proved by comparison with Assyrian and Babylonian law.

Popular, or customary, law as depicted in the patriarchal narrative was derived chiefly from the experiences of a nomad people. The codified laws of the Pentateuch go back to a later period when the population consisted mainly of peasant landowners, with foreigners, chiefly day laborers or those engaged in trade and various crafts, living among the peasants. Biblical law contains no references to large scale land tenure or to highly developed commerce. The foundation of the social structure was the tribal community, which was divided into families and kinship groups. The kinship group was headed by its chief, whose authority in the earliest period was so great that he could even pass sentence of death upon the members of his group (*Genesis* XXXVIII: 24). At a later period the authority of the head of the family diminished; according to the codified laws of the Pentateuch the father could not judge a rebellious son, who had to be haled before the elders upon the complaint of both parents (*Deuteronomy* XXI: 18–20). The elders usually held court at the city gate. Later the authority of these elders was restricted by the organization of centralized courts which acted as courts of appeal. These central courts were located at the sanctuaries, especially at the time when trial by ordeal was employed or when the disputants were sworn under oath at a holy spot.

An urban civilization began to develop in the period of the kings, particularly around the residences of the royal officials, the fortified towns and the places where the battle chariots were kept. These new conditions destroyed the old tribal organization in large measure, for considerable land was taken away from families and concentrated in the hands of the king's kindred. The prophets often refer to the conflicts which arose out of the development of urban civilization, but we find no legal privileges for the upper classes in the codified laws of the Bible. In this period the judicial functions were centered in the king as the supreme judge and the royal dignitaries, who gradually began to participate in the elders' courts, where they soon gained a dominant influence.

During the entire period of the first temple the tribal organization persisted in land tenure. A member of the family was allowed to sell his inherited land, but his relatives were entitled to repurchase it from the buyer. This right still existed at the time of the prophet Jeremiah (*Jeremiah* XXXII: 8). The law providing that sold real estate should return to its original owner in the jubilee year (if this was in effect in the pre-exilic period) was based upon the family's joint rights of ownership in inherited real estate and at the same time represented a periodically recurring distribution of real estate among its

members. In *Leviticus*, however, the religio-ethical factor of the jubilee law is given greater emphasis.

The Biblical law of inheritance was based upon paternity, in conformity with tribal organization: the sons inherit; if there are no sons, the property passes to the daughters. If no children survive, the estate goes to the brothers of the deceased, and if there are none, to his sisters; if there are no brothers or sisters, the heirs are his father's brothers or sisters and so on. Since in the case of a female heir the estate would pass to another tribe if she were to marry into it, it was enacted that such an heiress must marry within her own tribe (*Numbers* XXXVI: 8). The levirate marriage (of a widow whose husband died without issue) is also linked with the concept of family organization. The widow was to remain in the family community and marry a relative of her late husband in order that the dead man's estate should not leave the family, and the first son born of this marriage was considered as the dead man's child (*Genesis* XXXVIII: 8; *Ruth* IV: 5); it is likely also that this son was the dead man's heir (*Ruth* IV: 6). According to the codified law of the Bible a widow might marry only the brother of her dead husband if the latter had died without issue, but she was also afforded a way (*chalizah*) of marrying out of the family (*Deuteronomy* XXV: 5–10). A woman was under her father's tutelage. The husband was entitled to dissolve the marriage bond. But many narrative passages in the Bible indicate that woman was in many respects independent (*Judges* XVII: 3–4; *I Samuel* XXV: 18–19) and even, as is shown in the case of Deborah, participated in public life (*Judges* IV: 4).

Slavery involved mostly slaves of non-Jewish descent. According to the codified law of the Bible the Jewish slave was freed at the end of his sixth year of service, the master had to take his Jewish maidservant as his wife or marry her to one of his sons (*Exodus* XXI: 1–11; *Deuteronomy* XV: 2). Narrative passages in the Bible indicate that insolvent debtors were sold as slaves to redeem their debts (*II Kings* IV: 1; *Nehemiah* V: 2–5), but in the codified law of the Pentateuch it is stated that only the thief who cannot make good the damage caused by his theft is to be sold into slavery (*Exodus* XXII: 2). Thus only the non-Jewish servant was a slave in the full sense of the term, but even he was not considered merely his master's property. If the master killed him, he was punished, while if he blinded him in one eye or knocked out one of his teeth, the injured slave regained his freedom (*Exodus* XXI: 20–21, 26–27). The prescription in *Deuteronomy* XXIII: 16, "Thou shalt not deliver unto his master the servant which is escaped from his master unto thee" represented a not inconsiderable alleviation of the slave's lot. But in practical life this humane provision no doubt had no binding legal force, and at the period of the Talmud it was interpreted in a restrictive sense (*Gittin* 45a).

In the codified law of the Pentateuch the provisions regarding debts are humane in spirit: the charging of interest on loans among Israelites was prohibited. The sabbatical seventh year (*shemitah*) caused the annulment of all debts. With the increase in commercial activities this law came to be too oppressive, and toward the end of the period of the second temple the *prosbul* was introduced in order to lessen its effect. Moreover provisions were included in the Pentateuch to protect the debtor in case of forfeits. The creditor was forbidden to enter the debtor's house to levy on anything; he could not levy on a mill, and according to general interpretation this exception was held to apply to all necessities of life. If the forfeit was an article of clothing, it had to be returned to the debtor before sundown.

According to the old common law punishments were applied in certain cases to the whole kinship group of the evildoer (*Joshua* VII: 24–25; *I Kings* XXI: 13; and *II Kings* IX: 26). In the codified law it was stated: "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin" (*Deuteronomy* XXIV: 16), and King Amaziah dealt with the murderers of his father according to this law (*II Kings* XIV: 5–6). A sharp distinction was made between murder, which called for the death sentence, and homicide, which provided for flight from the avengers to a place of asylum (*Exodus* XXI: 12–13). The *lex talionis* was applied to the infliction of bodily injury; in cases where the victim was unable to work the offender was required "to pay for the loss of his time" and to "cause him to be thoroughly healed" (*Exodus* XXI: 18–19).

There are many similarities between the codified law of the Bible and the laws of the Babylonians, Assyrians and Hittites. But Biblical legislation is distinguished from the other ancient systems of law by its inherent religio-ethical principle, which lends it universal historical importance. This principle was expressed as early as the Decalogue (*Exodus* XX: 16–17) and is

clearly reflected in many legal standards: the principle of freedom of the person, which is the foundation of the equality of all classes; the limitation of a Hebrew's period of slavery to six years; the legal protection of the non-Jewish slave, the foreigner, the debtor and the poor. The provisions regarding the purity of the family are stricter and unchastity was punished much more severely than in other ancient codes. The humane spirit of Biblical legislation is also expressed in the provisions for protection of animals.

The Biblical canon was established during the period following the return from the Babylonian Exile, and from this time its legal prescriptions possessed the authority of a binding code of law on the life of the Jewish people in Palestine. The brevity of these laws and their inadequacy for all the requirements of life seem to indicate that there were many old legal norms and customs, not mentioned in the Bible, which were looked upon as supplementing Biblical legislation. They formed the basis of the traditional, or oral, law. Furthermore there were many altogether too concise and insufficiently clear passages in the Bible which required elucidation and many new questions of law arose for which solution was sought in the Bible. As a result of these needs there developed a method through which, by means of interpretation, analogy and minute dialectical and hermeneutical differentiation, new explanations of Biblical passages were made possible as well as extensions of the provisions of the law. Later this method was also used in order to lend force and authority to new laws and to give them foundation, or at least a semblance of foundation, in a Scriptural passage. The first era after the completion of the Biblical canon, that of the scribes, was devoted to such elucidation and interpretation, and at the same time to placing the oral juridic traditions on a firmer basis. Although no legal sources have come down from this period, many of its doctrines have been preserved in later sources, such as the Apocryphal books, the works of Josephus and Philo and the legal portions of the Talmud.

During the period of the second temple the legally binding character of the oral tradition was not always recognized by the forces in power. The Sadducees, unable to abjure the authority of the Bible, made use of a literal and very rigorous interpretation of Biblical law in order thereby to deny in toto the oral tradition of the Pharisees. Thus they found it possible also to introduce Greek and Roman ideas and institutions so as to provide for instances otherwise covered by the oral law. Toward the close of the Hasmonaean period, after the Pharisees had gained the upper hand, the *Sefer geseroth* (Book of decrees) of the Sadducees was abrogated, and the day on which the decree was promulgated was fixed as a national holiday. Only a few of the laws introduced by the Sadducees have been preserved in the Talmud. For example, the Sadducees held that "an eye for an eye" should be taken in its literal meaning, while the Pharisees felt that a money payment for damages was sufficient. The Sadducees extended the right of inheritance to include daughters. Philo (*De specialibus legibus*, bk. ii, sect. 125) held that unmarried daughters were entitled to share in the estate.

During the Herodian dynasty Rome's influence was very extensive and the royal decrees often conflicted with the traditional juridical principles of the people. An echo of their complaints against Herod's innovations in the legal sphere, particularly with regard to Jewish slaves, is to be found in Josephus (*Antiquities* XVI: 1, 1; XVII: 6, 2). As a result of the conflict between the government of the kings and the Pharisee scholars as the guardians of tradition, which continued throughout the period of the second temple, not a trace of the kings' legislative activity remains in the traditional law as conserved in the Talmud.

Similar conflicts between the Pharisees and the Sadducees took place in the judicial tribunals of the period. The great Sanhedrin, consisting of seventy-one members, was alternately dominated by the Pharisees and the Sadducees. The local criminal courts, the small Sanhedrin, composed of twenty-three members, and the courts which according to Josephus consisted of seven members (*Antiquities* IV: 8, 14; IV: 8, 38) but which the Talmud states had but three were affiliated with the local administration; and during the periods when the Sadducees had the upper hand these courts were under their influence. This condition persisted until the ultimate victory of the Pharisees.

For a long time the Jews were disinclined to put these traditional laws in writing because they did not want to place them on a footing of equality with Scriptural doctrine; but during the era of the second temple, particularly after the period of Hillel and Shammai, a beginning was made in the editing of these laws. After Hillel's doctrines had gained general acceptance systematic editing was undertaken (at the commencement of the second century A.D.) by Rabbi

Akiba; it was improved by his disciple Rabbi Meier and brought to completion at the end of the second century by Rabbi Judah Hanassi. This edited collection of laws of Judah Hanassi is called the Mishna. It consists of the following six parts or orders: *Seeds*, dealing with agricultural laws; *Festivals*, with the laws of the Sabbath and holidays; *Women*, with laws of marriage and divorce; *Damages*, with civil and penal law; *Sacred Things*, with sacrifices and temple rites; *Purifications*, with laws of purity of things and persons. This material represents a selection from the abundance of source material and is phrased in concise and lucid form. Legal material which was not included in the Mishna has been preserved in what are known as *beraithoth*, and there is a special collection of this material called the *tosephta*. Some of the laws of the Mishna and the *beraithoth* are of very ancient origin, while others are of later date. In the *beraithoth* can be discerned even later additions dating from the period after the completion of the Mishna. The date of origin of these laws of the Mishna can be deduced particularly from their style, their content and the scholars mentioned in them. Many passages of the Mishna cite differences of opinion between the rabbis without, however, stating which viewpoint is the correct one. Hence the Mishna cannot be looked upon either as a code or as the termination of an epoch. The orderly arrangement and clear style of the Mishna facilitated the study of the legal sources, and soon after its completion it became widely current among the Jews of Palestine and Babylonia. The Mishna was studied, elucidated and interpreted in the schools of these countries, just as the Bible had been interpreted in former times. Scholars discussed its various provisions and reconciled their apparent discrepancies, extended the laws and added new ones which fitted the needs of the times. This mass of material was collected in Palestine toward the close of the fourth century and called the Jerusalem Talmud or Gemara; in Babylonia this was done toward the end of the fifth century, the collation being called the Babylonian Talmud or Gemara. Because of the greater concentration of the Jewish population in Babylonia and the ascendancy of the Babylonian academies over those in Palestine at the end of the period the Babylonian Talmud is by far the more important of the two in its influence on Jewry. The combination of the Mishna and the Gemara is now generally referred to as the Talmud. By virtue of its keen dialectics and clear analysis the Gemara became the foundation of later Jewish law and enhanced its adaptability to the changing conditions of life during the wanderings of the Jewish people; it was more effective in this respect than was the Mishna with its clear provisions and precise manner of expression.

The jurisdiction of the Jewish courts was restricted after the overthrow of the Jewish state. According to Talmudic tradition they were deprived of authority in criminal matters (death sentences) forty years before the destruction of the second temple. For the most part their jurisdiction still continued in civil cases; even during the periods of greatest oppression this right was retained, although the courts may have been used merely for arbitration. In Babylonia the Jewish courts exercised extensive jurisdiction under the rule of the exilarchs, especially in civil cases. Jewish courts had wide jurisdiction in civil cases and in the regulation of the inner life of the community in other countries as well. Devotion to tradition was strong enough to compel the members of the community through moral and social pressure to submit to the jurisdiction of their own courts, whose decisions at worst were pronounced as those of a freely chosen board of arbitration.

The Jewish courts in Palestine and Babylonia had the right of forcible execution of their decisions. Their weapon was often the anathema (*cherem*) or temporary exclusion from the community (*nidui*). The penalty of thirty-nine lashes was also imposed except in cases involving money claims. During periods when the governmental authorities were benevolently disposed toward the Jews the Jewish courts also had jails in which to confine the unruly.

The laws of the Talmud throw some light upon the economic conditions of the Jewish people at the time, who are shown to have been chiefly small peasants and tenant farmers. The latter usually farmed small plots of land which the owners could not cultivate. There are but slight indications in the Talmud of large scale land tenure among the Jews, perhaps because the big Jewish landowners often refused to subject themselves to the jurisdiction of the Jewish courts. Trade was confined largely to agricultural products, which were sold in the markets of towns or in neighboring countries. There is little or no reference in the Talmudic legal sources to any caravan trade in distant countries or to oversea shipping.

Talmudic law exhibits a high degree of organization and covers all the aspects of life. Tribal

organization and the family's joint tenure of land had disappeared by the very beginning of the era of the second temple. The principle of freedom of the person, expressed even in the Bible, is clearly manifested in the Talmud. Enslavement of Jews was unknown in practise. Everyone enjoyed full standing before the law. Women who had come of age were not placed under any sort of tutelage; they suffered only one disability—incompetence as witnesses—which was justified by the assertion that women are always dependent upon, and hence influenced by, other persons. The restriction of woman's right to inherit from her parents or her husband was taken over from Biblical times. On the other hand, many laws were introduced to ameliorate her position: husbands were obliged to make money payments (*kethubah*) and to provide support in cases of dissolution of marriage. The position of orphan daughters was likewise improved by the law stating that their support should be provided for out of their father's estate (in small estates the daughter's support took precedence over the son's inheritance rights), while their trousseau and dowry also had to be furnished out of the estate. A married woman could have property of her own (*melug*), although her husband enjoyed its usufruct. In the period following the destruction of the temple the wife's right to dispose of her private property was limited. On the other hand, the law did allow that suitable clauses be inserted in the marriage contracts providing that the husband have no rights in his wife's property; in such cases the wife was undisputed mistress of her property and in this respect had equal legal standing with men.

The methods of acquiring ownership were extended in the Talmudic era. Symbolic forms of taking possession, introduced to facilitate commerce, took on special importance. Often they became ways of taking over obligations, since in Talmudic law as in many other ancient legal systems the assumption of obligations was given a concrete and tangible interpretation. The Talmudic law of obligations, unlike that found in other contemporary systems of law, does not allow the collection of debt upon the person of the debtor or forfeit of his freedom. The security for obligations was in principle a material one; for example, a pledge of property. The inclusive pledge (general mortgage) was introduced among the Jews to increase the degree of security, and as early as the period of the Mishna it was widely employed. The formal basis for such a mortgage was a document drawn up before witnesses.

The principle of prohibition of interest on borrowed money was enforced very strictly. In order to facilitate credit use was often made of a partnership between the lender and the person who borrowed for business purposes, the borrower working actively in the enterprise. It was stipulated that profit and loss were to be shared between the two. According to the provisions of the Talmud the person managing the business was to get a larger share of the profits or was to be liable for a smaller share of the losses.

Although the Jewish courts ceased to exercise jurisdiction in criminal cases after the destruction of the second temple, many restrictions of the death sentence found in the Talmud go back to the time when judgment was passed upon such offenses. The *lex talionis* was abolished and suitable fines were introduced in its stead. In crimes involving the death penalty the increased requirements as to the necessary witnesses and other evidence and the provision that the offender had to be warned of the penal consequences immediately before the commission of the crime virtually excluded the possibility of imposition of the death sentence.

In civil trials the theory of evidence and its evaluation had reached a high stage of development. Testimony under oath was in widespread use at the time of the Mishna, being employed especially in those cases where one litigant was not sure whether or not the statements of his adversary were correct. During the period of the Gemara the general oath (*hesseth*) was introduced; the defendant had to take this oath in order to deny the complaint, and it was often used to determine the material facts in the case.

The Talmud has remained the highest authority in Jewish jurisprudence. In the post-Talmudic period attention was concentrated upon explanation of the Talmudic laws, systematic arrangement of the laws scattered throughout the Talmud and responses to inquiries concerning new legal problems. In urgent cases new laws and reforms were introduced, and endeavors were made to anchor them in the provisions of the Talmud. The Mishna was based upon the Bible, the Gemara upon the sources of the Mishna and later juridical literature was in turn based upon the Talmud. The centers of Jewish jurisprudence shifted—together with the Jewish people—from Palestine and Babylonia to northern Africa, Spain, France, Germany and Poland. During the period of the post-Talmudic Babylonian schools, which endured for several centuries after the conclusion of the Talmud, Tal-

mudic law continued to develop along the lines mentioned, and the work of codification began. The most important of the early steps in this process were the work of Isaac Alfasi (1013–1103) in north Africa, who rearranged the Talmudic laws, eliminating the dialectical controversies as well as the legal provisions which no longer applied at the time and leaving merely the part which actually applied to the Diaspora. He also added legal decisions dating from the post-Talmudic period. The most important codes of Talmudic laws, containing the legal as well as the ritual prescriptions, are those of Moses Maimonides, Jacob ben Asher and Joseph Karo. The *Yad ha-chazakah* (1180) of Maimonides contains a good arrangement of the legal provisions according to subject matter and is noted for its clear and precise mode of expression, resembling the style of the Mishna. In general it follows the contents of the Talmud, containing but few of the laws introduced after the Talmud's completion. The *Turim* (1327–40) of Jacob ben Asher is noted for a better arrangement and subdivision of the material and contains more new laws, but it often cites various points of view without deciding which is the law. It also lacks Maimonides' clarity and precision of style. The *Shulchan aruch* (1565) of Joseph Karo follows the *Turim* in the arrangement of the material but resembles the work of Maimonides in its conciseness and final decision as to what is legally binding. It does not compare with Maimonides, however, in clarity of expression.

The problem facing Jewish jurisprudence during this epoch was the adaptation of the accumulated laws, which had evolved in Palestine and Babylonia among petty peasants and small scale traders, to a new economic structure consisting of such vital factors as urban life, commerce, trade and financial affairs in the countries of the Diaspora, especially in Europe. This adaptation was rendered possible by the keen juridical analysis of the Talmud. This process of adaptation of Jewish jurisprudence to commercial life had begun as far back as the post-Talmudic period in Babylonia. Talmudic law had attached special emphasis to real property, in many respects ranking it above personal property. When the Jews turned from agriculture to trade and commerce, however, the decree of the Geonim at the commencement of the Islamic era established the equality of personal and real property. The symbolical acquisition of ownership in the Talmud was well suited to the transfer of ownership of movable goods. The obligation, which even during the Talmudic era represented fundamentally a pledge of the debtor's property rather than a *vinculum juris* among individuals—as in Roman law—was admirably adapted to becoming an article of commerce passing from one hand to another. The selling of obligation contracts is mentioned even in the Mishna, and in the Middle Ages traffic in certificates of indebtedness became widespread. As early as the thirteenth century promissory notes made out "to bearer" were known among the Jews, and in the seventeenth century the *mamram*, a note of hand very similar to the modern commercial note, was in common use among the Jews of Poland.

Proxies were already developed in Talmudic legislation and were used in many ways in the commercial life of the Middle Ages. The limitations of representation by proxy at trials, introduced at the time of the Talmud, were abrogated in the post-Talmudic period. During the Middle Ages endeavors were made to improve woman's position in family law (in so far as she had no right of inheritance) but these reforms were confined largely to the countries of the West. An expedient was introduced by which a daughter was enabled to inherit half as much as a son. The custom was introduced of inserting a clause in a marriage contract restricting the husband's rights to inherit his wife's estate, especially during the first few years of marriage; on the other hand, the wife's right to a share in her husband's estate was made more inclusive.

In the post-Talmudic period the anonymous ban of excommunication was introduced into trial procedure; it was usually pronounced against anyone doing "so and so" or making deceitful statements in court, without mentioning the name of the litigant or that of any other person. This method was used to compel the litigants to give true testimony. The custom was likewise introduced of making anyone asserting he did not possess any funds with which to meet his debts swear an oath of manifestation.

Jewish law gradually adapted itself to all the requirements of Jewish life in the countries of the Diaspora by means of legal statutes and reforms of this sort, so that all matters and business affairs were settled in accordance with this law. And since commerce was largely concentrated in the hands of Jews in many countries during the Middle Ages, the Jewish laws influenced the commercial legislation of other nations. The evolution of Jewish law continued down to the eighteenth century. As a result of

Jewish emancipation and the break up of the ghetto the Jews began to live and do business under the laws of the country in which they resided and the use of Jewish law in many fields of life and commerce was thereby limited. In eastern Europe, which is still the center of orthodox Jewry, Jewish law continues operative to some degree in commercial as well as family and inheritance matters. The Jewish tribunals are, however, more in the nature of courts of arbitration with only a voluntary submission on the part of the litigants to the jurisdiction and decisions of the rabbis. Some steps have recently been taken toward reestablishing Jewish law in certain parts of the life of Palestinian Jewry. The jurisdiction of Jewish religious courts has been recognized by the Palestine Order in Council of 1922 in many matters of personal status, such as marriage, divorce, alimony, guardianship, wills and the like. Tribunals of arbitration known as Mishpat Ha-shalom and organized to deal with ordinary civil and commercial matters have also come into use and in 1927 received official recognition by the British administration. They are regulated on the principle of the English Arbitration Act of 1889.

ASHER GULAK

GREEK. The sources of our modern knowledge of Greek law are extremely scattered. No law books are extant as for Roman and Germanic law. It is necessary to rely, in the first place, largely on epigraphic and literary records, chief of which are the judicial speeches of the Attic orators, and, in the second, on the ancient commentaries upon the literary records, often in the form of lexicons (Lexica Segueriana, Pollux, Suidas and the like). There survives only one ancient treatment of problems of Greek law, Theophrastus' fragment on contracts (*περὶ συμβολαίων*), dealing principally although not exclusively with the transfer of real estate. Chief among the available inscriptions are the so-called Code of Gortyn in Crete (first discovered in 1884 and last edited by Kohler and Ziebarth) dating from about the fifth century A.D. and the Draconic laws on homicide in the revised version which dates from the same century. Finally, Plato's *Laws* and to a lesser extent his *Republic* may also be considered as sources.

The so-called principle of personality was an axiom of Greek law. Wherever Greeks dwelt, every citizen of every Greek polity was to be judged according to the laws of his homeland. Greek law often influenced Roman law, especially in the establishment of the Twelve Tables, as is evident from their very mode of origin: the *decemviri legibus scribundis*, who drafted them, were not merely a codifying commission but also the highest magistrates, occupying a position that corresponded to that of the Greek *αἰσυμνήτης* in many respects. In the Hellenistic period Greek law maintained itself largely unadulterated by oriental influences on the mainland of Greece.

The entire area of Greek law consisted of a number of small states, each with its own legislation. But by means of an intellectual process which singled out the inner unity and homogeneity of all these legal orders as their very essence there was achieved the concept of a uniform Greek civil law, transcending the diversity of the various Greek juridic systems. Since Greeks themselves felt their law to be a unity, one Greek polity would not object to taking judges from another or to adopting the laws of another, particularly the law of Athens. In point of content law was not looked upon solely as a human institution; it was assumed rather that it was based upon supernatural institutions, such as the *θέμις* and the *δίκη*. The former was the divine will, tending especially toward the views of the aristocratic upper class in power at the time. The latter was the sanctified concept of the specific rights of the individual under divine prescription; hence the term might also mean a lawsuit.

As among all other peoples law among the Greeks in the age of the epic poets was exclusively customary law (*ἔθη*). While court practise and jurisprudence were of such slight importance among the Greeks that often their very existence cannot be evidenced, custom was comparatively influential, as in the law of pledge. The most important source of law, however, was the statute. The transition from customary to statutory law took place as a result of political struggles on the part of the oppressed classes of the population against the ruling classes, who controlled the courts. For this reason the Greek statute originally was not a norm to which all citizens had to conform, as in the modern conception, but rather a restriction of the unbounded free judgment of the authorities; i.e. instructions to the magistrate, who was obliged to execute the statute. Consequently the statute was at first generally named after the authorities to whom it applied. Thus in Athens the statutes were differentiated into four classes: the statutes applying to the council (*νόμοι βουλευτικοί*), stat-

utes for all officials (*νόμοι κοινοί*), statutes for the nine archons (*νόμοι τῶν ἐννέα ἀρχόντων*) and the statutes for other officials (*νόμοι τῶν ἄλλων ἀρχόντων*); the legislation for the chief archon, called *νόμοι τοῦ βασιλέως* and dealing with ritual and criminal matters, predominates in the first group of laws. Because of the close connection between the concept of the statute and the official charged with its execution the statutes were officially published and exhibited, so that they might be constantly before the official concerned and the citizens having recourse to them. Thus the laws of Gortyn were discovered on the circular walls of a public building. In Athens the regular place for publication of the statutes was the royal hall, which was long the center of administration. Only rarely and at a much later date were the statutes named after the subjects dealt with: statutes on foreigners, on commerce, on homicide and on mining (*νόμος ξενικός, ἐμπορικός, φονικός, μεταλλικός*). It must not be supposed, however, that a specialized commercial or mining law ever developed or that the statutes applied only to citizens, with foreigners subject to the unrestricted rule of the magistrates. While later speculation, such as that of Plato and Aristotle, divided Greek legislation into the *νόμοι* and the *πολιτεία*, thus distinguishing between ordinary and constitutional legislation, actual practise knew of no such distinction. All lawgivers were called *νομοθέτεις*, even if they only drafted constitutional laws. There are other names for a statute than *νόμος*, such as *ῥήτρα* (bilateral contract, promise), *ἄδος* (placitum) and *θεσμός* (a norm established by an external and superior power). Like all law the statute appears as the emanation of a general, metaphysical order, and various consequences were conceived to follow necessarily from this. Like must be treated alike: every citizen must be equal before the law (*ἰδιονομία*). Again, the Greeks recognized the existence of a *νόμος ἄγραφος*, denoting general natural law as distinguished from specific positive law and conceived at the same time to be a necessary component of every positive law, which since it was based upon equity and good morals did not need to be expressly written down. Finally, the statutes were themselves supposed to be of divine nature and the lawgiver was considered to be inspired by the gods. In the archaic era opposition to changes in the statutes went so far as to threaten punishment for proposals to amend them. Later, *νόμος* and *ψήφισμα* (decree) were often differentiated: while the latter was actually often an amending statute, it was not supposed to conflict with the former. Changes in the statutes were made by the submission of proposals for such changes to a special commission, which in turn submitted proposals to the assembly of citizens.

Originally Greek laws were often transmitted by memory only; thus in historical times there was in the city of Mazaka a special official "singer of the laws" for the laws of Charondas there in force. Lycurgus prohibited the writing down of his laws. On the other hand, in historical times the city-state made official collections of its laws. Thus in Athens there were the *κύρβεις*, booklike racks for the laws of Solon, and in Sicyon the *πινακίδες* (tables). The frequently mentioned procedure of recording the laws refers to their preservation in the state archives. The literary transmission of the laws in such a work as that of Theophrastus, already alluded to, was indirect because it represented a systematic collation and not merely a reproduction of the Greek statutes. But there also were works which gave the wording of the statutory provisions, such as an edition of the laws of Solon by Aristotle, as well as the *πίναξ νόμων* dating from the period of Alexander. New laws were also sold on the street, as mentioned in Aristophanes' *Birds*.

Since the growth of Greek law was closely bound up with the nature of the state, it is necessary to distinguish the period before the rise of Greek democracy, the so-called heroic age, from that of the democratic constitutions. During the former period customary law prevailed, almost exclusively as it seems; the latter was the age of the great lawgivers, such as Charondas of Catana, Zaleucus the lawgiver of the Epizephyrian Locrians, Lycurgus of Sparta, Draco and Solon of Athens, Hierocles of Syracuse, Pheidon of Corinth, Philolaos of Thebes and many others. The literary transmission of legislation often contained stoic elements, which although the result of later political theory were attributed to the old lawgivers.

In view of the slight development of Greek jurisprudence it is impossible to speak of a "spirit of Greek law." There are, however, certain general principles which permeate all Greek law, such as requirements of form or publicity. The most important form is the hand rite, i.e. the representation of a person's legal authority by means of the hand, as in engagements, and even more strictly in the ceremonial of marriage by the *ἐγγύησις*, requiring the guardian to hand

the bride to the bridegroom. Likewise, the guarantor (ἔγγυος) handed himself over to the creditor. Publicity is the linking of the state's authority with a legal transaction. It was employed in the transfer of real estate, as reported by Theophrastus, in the securing of an inheritance and in the liberation of slaves (there were also private forms of liberation). In Athens, where either the husband or wife could obtain a divorce, apparently only the latter, who had to declare personally to the archon that she wished a divorce, had to meet a requirement of publicity. The requirement of publicity is also found in the ἀποκήρυξις, i.e. the expulsion of a child from the home by means of the herald's cry, as well as in adoption.

Publicity was also secured by the archives, the group of public institutions whose primary function was to preserve documentary records of matters of legal importance. The precursors of the archives were the μνήμονες (rembrancers) as well as private document keepers, συγγραφοφύλακες. The real origin of the archives was the membership lists of the groups into which the population was divided, such as the phratries and the phylae; these adopted the practise of recording marriages, the root of the present system of vital statistics. Further developments occurred in the Hellenistic period.

The most important factor in the Greek law of persons is the difference between freemen and slaves. The latter were divided into the οἰκέτης, the slave who worked in his master's household or business concern and was incapable of owning property, and the δοῦλος μισθοφόρος, the half free slave, who lived outside his master's household and evidently merely paid him a fee at regular intervals. Such a slave could transact business and could be sued. In addition to slavery there were such forms of serfdom as that of the penests in Thessaly and the Helots in Lacedaemon. There existed also the pledging of one's person for debt, which might give rise to the peonage of the debtor; in this case he was settled upon one of the creditor's estates and had to deliver to him a part of the produce of his labor. If the debtor was injured, the fine was shared by the creditor and the peon; but as long as the peonage lasted the creditor alone could bring suit. The difference between the native and the alien was of importance in the various classes of the wholly free population. Although at first the alien was without any legal rights, a special treaty procedure evolved from the legal aid treaties, particularly from their prohibitions arbitrarily depriving an alien of his property or freedom of person, and later a special alien procedure was incorporated in the body of the domestic law. Rarely was the alien granted the right to purchase real estate or to marry, i.e. the right to contract a fully recognized marriage with a wife from among the native inhabitants. He was, however, wholly subject to the provisions of the criminal law. In addition to individual persons Greek law defined associations (which were guaranteed freedom of association by Solon) and foundations, both independent and subsidiary. The latter class included foundations administered by another juristic person, as, for instance, a city. Gods, the dead and even animals were recognized as legal subjects.

In historical times individual ownership was recognized not only with respect to goods and chattels but also with respect to real estate. Vestiges of collective ownership of real estate, however, still persisted. It was exercised by the clan (γένος), although the family was also considered to be the collective owner of the family property; a survival of this point of view, for example, was the designation of real estate as κλῆρος, i.e. lot. This meant that the use of the land changed by lot within a certain circle of persons, that is, the clan, which was the real owner. The most ancient case of private ownership of goods and chattels was the portion of the dead, i.e. armor and ornaments which were placed in the grave. The booty and plunder of war also played an important role in the origin of property. There is no Greek expression for the abstract right of property. Property and inheritance disputes were subject to the system of the so-called διαδικασία, a form of action for testing the right of tenure. Thus no investigation was made (as in the more highly developed Roman law) of the absolute justice of the plaintiff's and the defendant's case; the relative merits of the two were merely considered, so that even the person in possession was compelled to prove his right. The ownership of an estate might belong to several persons (with or without actual division), so that, for example, plots belonging to different owners might all lie within a single fenced in estate. Servitudes did not exist, while hereditary leasehold (emphyteusis) is found only during the Hellenistic period. On the other hand, the law of pledge was highly developed. There were distinguished the ἐνέχυρον (dead pledge), the hypothecation and the ἀποτίμημα (the latter intended chiefly to secure trust property and dowry claims). In Athens and in the

Ionian Islands there were often placed upon estates the so-called ὅροι, which served not only as boundary stones but often as pledge stones. The inscriptions on the stone recorded the fact of pledge and the restricted rights of disposal resulting therefrom. Meriting special notice because they anticipate important provisions of modern law are the objects protected against pledge by the Greek lawgivers for social reasons: a creditor could not take arms, a plow or other possessions which the debtor needed for a living. In the law of obligations the creditor originally possessed the right to seize the person of the surety, which was forfeited like a pledged security. Only at a later date was the creditor's right of self-help replaced by the judicial condemnation of the surety to make good the loss. Credit transactions were often held to be not actionable or to become actionable only upon the giving of a deposit. Freedom of contract existed in Athens. As far as is known most contracts were loan contracts; and chief among these was the marine loan, in which the fate of the claim was closely bound up with that of a given cargo in accordance with a special contract document (συγγραφή). Leases of labor were also important contracts. It is worth noting that linguistic usage did not differentiate between purchase and lease. Since purchase entailed liability for legal and physical defects, it was the seller's duty to make known any such defects (προλέγειν). Delictual forms of private action were strongly developed. Indeed a general form of action for damages was recognized. The concept of deliberate and capricious injustice to one's equals by artifice or affront was of importance and is still of general historical significance, since it involves the general protection of personality. It should be noted that a perjured witness was also liable at civil law.

Marriages were interdicted only in the ascending and descending line but not in collateral lines; thus the marriage of brothers and sisters was allowed. Vestiges of marriage by purchase are to be found in Homer. Monogamy had not yet become wholly accepted; on the contrary, a number of forms of sexual union were specifically recognized at law. When later the dowry (προίξ) was introduced it remained the property of the wife and was always secured by a lien upon the husband's property. As long as a woman remained unmarried, she was said to be under κύριος.

The law of inheritance provided for both testate and intestate succession. The law of intestate succession gave preference to the children, who were followed by the more distant relatives. Only the children were liable for all the debts of the deceased; all other heirs only to the extent of their shares in the estate. But even in Plato the testament comes to the fore. According to Plato's not unchallenged authority (*Laws*, 922 E) the old lawgivers granted the right of disposing of property by will. Nevertheless, a number of intermediate forms in the evolution of the Greek law of inheritance may be clearly distinguished, such as a gift of an estate to take effect in the event of death, sometimes with a restriction as to the value of the property thus disposed of (for example, 100 staters in Gortyn). Another such intermediate form was adoption by will, by which the testator decided who was to be his son and heir. Where the only child of the family was a daughter, she might be given in marriage together with the estate; and legislation (enacted by Solon in Athens, by Epitadeus in Sparta) seems to have been required to make possible the choice of a husband for the heiress (ἐπίκληρος) among a wider circle than that of the relatives. The husband of the heiress became the adopted son of the testator, so that, strictly speaking, this was only another case of adoption by will. The device was used for the transfer of a family holding to the nearest agnate.

Greek criminal law was originally based upon the concept of vengeance. The famous trial scene depicted upon the shield of Achilles already indicates perhaps the substitution of compulsory composition for the unmitigated blood feud. Originally only the injured person or his kin might take action, but at a later date it became the rule—probably generally, certainly in Athens—that every citizen might prosecute offenders, an innovation introduced by Solon. This system of prosecution, however, was not based upon a division of wrongs into criminal and civil. Rather suits were regarded as either private (δίκη) or public (γραφή) depending upon whether the object was the redress of private wrong or the infliction of public punishment, but great freedom was maintained in the choice of the form of suit. Vestiges of the older system are represented by the provisions of the laws of Draco that prosecution for murder might be undertaken only by the relatives of the victim, but that if these were not forthcoming the phratry (a group of several families) might prosecute. The relatives as well as the dying victim had, however, a right of forgiveness. In view of this family solidarity in the criminal law it is

not surprising that such a consequence of a crime as ἀτιμία (disfranchisement) was visited not only upon the offender but also upon his children. A marked feature of the Greek criminal law in the age of democracy was the great variety of political offenses which might be committed not only by officials but by ordinary citizens. Greek law as the law of a people of great cultural achievement laid great emphasis upon the element of will in legal transactions. In the criminal law a distinction was made at a relatively early date between evil intent, negligence and accident. Among the penalties of Greek criminal law were death, loss of freedom by enslavement, which, however, was applied only to non-citizens, and last but not least fines, which were either fixed by statute or were in judicial discretion. On the other hand, neither mutilation nor penal imprisonment was ever resorted to. All Greek communities practised the confiscation of an offender's wealth for the benefit of the state. Only in a few cities, as in Lacedaemon, was whipping used as a punishment, especially for children and for slaves who could not pay a fine.

The Greek systems of judicial organization illustrate even better than the substantive law the close dependence of legal upon political forms. In the period of the oligarchy as in all the older stages of Greek constitutional history officials possessed judicial powers, at least in civil disputes. In many of the Greek oligarchic cities the council exercised criminal jurisdiction, especially in state trials. In Athens there was but one assembly with judicial powers down to the age of Solon. Under the democracy the pre-existing jurisdiction of the officials was considerably limited or abolished when Solon provided for appeal to the Heliaea, the judicial assembly of the people. Later the trial was had in the first instance before a special panel of the people, the dicastery, but notwithstanding the separation of judicial from other functions represented by this change of procedure the courts continued to be known as heliastic courts. In Athens every citizen above thirty years of age was eligible for service. Six thousand dicasts, chosen by lot from the applicants, were assigned by lot to the various tribunals. From the modern point of view the number of dicasts in the various panels was very large: there were at least 201 in civil suits and at least 501 in public suits. The tribunals were presided over by a non-voting official, called a thesmothete. Pericles instituted the payment of daily stipends to the dicasts. There was no legal recourse from the decisions of the popular courts; the sentence might be executed immediately after judgment was pronounced. There were similar popular courts in all the democratic states, but there were differences as to the judges' minimum age or the manner of their selection. In Athens despite the establishment of the heliastic courts judicial functions continued to be exercised by the Areopagus and the ephetic courts, which since very ancient times had had jurisdiction over crimes of homicide and several other offenses. Doubtless the sacred traditions which were associated with these courts prevented any attempt to disturb their jurisdiction.

The procedure in the heliastic courts was very similar in both criminal and civil cases, although as already noted a distinction was made between private complaints and public charges. A litigant could be represented by an orator. Thus representation by proxy was recognized, but there was no compulsion in this regard; a litigant could have his case prepared by an orator and deliver it himself. Procedure was oral and public. One peculiarity of procedure was the litigant's obligation to read aloud to the court the legal principles involved in his case. Thus the modern principle that a court takes judicial notice of legal provisions did not apply in ancient Greece. The dicasts were not bound by any rules of evidence. The oath, both as a litigant's and a witness' oath, was an important means of proof. Slaves testified under the application of torture. The procedure before the Areopagus manifested vestiges of very ancient forms even in historical times. There was also a special procedure in maritime cases as well as an abbreviated procedure for common criminals, who if caught in the act were immediately executed.

EGON WEISS

ROMAN. *See* ROMAN LAW.

HELLENISTIC AND GRECO-EGYPTIAN. Hellenistic law is the law which developed in the Hellenistic epoch, that period in the cultural history of the eastern Mediterranean world between the time of Alexander the Great and the conquest or acquisition of the area by Rome. Hellenistic law, a compound of Greek and oriental elements, did not perish when Rome absorbed the eastern Mediterranean world but continued to exist for centuries alongside the imperial Roman law. Inasmuch as the great majority of the extant sources of Hellenistic law derive from Egypt—despite its vast area the

Hellenistic world has bequeathed comparatively little in the way of legal sources to modern times —the present survey will deal almost entirely with that locale, and hence the coordinate title has been prefixed. Thus unless there is a special indication to the contrary, it is Greco-Egyptian law that is described.

The inscriptions of the mainland of Greece are of little value, because in these localities the oriental influence was slight; and the law of the Hellenistic epoch remained for the most part Greek. The native kingdoms of Asia Minor, on the other hand, were only superficially Hellenized. The Seleucid, Arsacid and Parthian empires have provided a few, but very significant, legal sources: excavations at Dura in Mesopotamia (refounded by Seleucus I as Europos) have recently unearthed documents in the Greek language written upon parchment; in Susa an inscription was discovered that deals with manumission; while in distant Avroman in Kurdistan two parchment texts penned in Greek illustrate Hellenistic penetration. Cuneiform documents of these monarchies likewise present Hellenistic legal concepts, notably the deeds of sale from Uruk in southern Mesopotamia. Pergamene inscriptions are valuable chiefly for the Roman period, while Syria is best represented by the Hellenistic portion (intestacy) of the Byzantine Syrian Roman Law Books of the Byzantine period (after the fifth century). On the south Mediterranean shore recent excavations by the Italians in Cyrenaica have revealed Hellenistic legal sources, particularly the constitution of Cyrene (308–06 B.C.) and the edicts of Augustus directed to this region (7–4 B.C.). Eclipsing all other sources, however, are the thousands of papyri of commercial, financial and legal content that have been found in Egypt. Supplementing the Greek papyri of Ptolemaic, Roman, Byzantine and even Arabic times are the demotic papyri of the Ptolemaic and Roman epochs and the Coptic papyri of the Byzantine and Arabic periods. Thus, for Egypt at least, for ten centuries (*c.* 300 B.C. to 700 A.D.) a relatively complete picture can be obtained of the interrelation of the Greek and oriental elements of the popular law.

No juristic commentaries or legal-philosophical writings are extant to reveal the theoretical jurisprudence of the peoples of the Hellenistic world. Law seems to have derived from legislation or customary law, Greek or local. Among the legislative sources were the πολιτικοὶ νόμοι, or city-state legislation, e.g. of Alexandria and Pergamum, and the various enactments of the kings. The statute from Dura relating to intestacy (*c.* 280 B.C.), the revenue laws of Ptolemy Philadelphus (285-46 B.C.), the edict (πρόσταγμα) of Ptolemy Euergetes II fixing the jurisdiction of courts (118 B.C.) and Ptolemaic enactments upon civil procedure and slavery are among the important sources of the era of independence; and when the Roman emperor and provincial governors took over the position formerly occupied by the king, the legislative development of Hellenistic law was continued by such means as the edicts to the Cyrenaeans (7–4 B.C.), decrees upon the marital rights of soldiers (*Papyrus Cattaoui*, second century A.D.) or upon prescription (*Papyrus Strassburg*, no. 22, third century A.D.) as well as by administrative ordinances; e.g. the Gnomon of the Idios Logos.

Private law, however, is in the main to be extracted from documents. Of important legal consequence in the Greco-Egyptian system is the concept of documentation. A document might merely attest a transaction or in fact constitute the transaction; it might be phrased subjectively in the first person or objectively in the third person; but most significant is the distinction between private and official documents. The earliest private document, the συγγραφοφύλαξ contract (the Avroman parchment is of this type), is a six-witness instrument. More frequent is the χειρόγραφον, always subjectively phrased and without witnesses. The third type of private instrument is the ὑπόμνημα, or petition to an official. In Ptolemaic times the ἔντευξις, the personally delivered petition, was utilized to begin a trial, while the ὑπόμνημα was rather a supplemental request. The public documents included the state notarial deed, or document executed by the ἀγορανόμος (an administrative official), and the συγχώρησις instrument, executed by a judicial official of an Alexandrian court, setting forth the petitions of both parties to the transaction. Of semipublic nature was the instrument executed by a banker, the διαγραφὴ τραπέζης, because banking was in the main a state monopoly. The official registration of private documents (δημόσιος χρηματισμός) developed in Roman times, perhaps to discourage the χειρόγραφον, the purely private memorandum. Certain formulaic clauses also had vital legal effects. Thus the καθάπερ ἐκ δίκης clause would lead to summary execution, while various stipulations provided for penal damages and fiscal fines. Originally most documents were double, that is, with both an inner and an outer writing, but this practically disappeared in Egypt with

the Roman era although it persisted longer elsewhere. Seals were employed for subscriptions and attestations, lengthy descriptions of the parties were phrased in formulae and provision was made for the payment of a documentary tax. In Byzantine times documentation plays a lesser role and practically all deeds are of the Roman *tabellio* type, a practise which persisted in instruments written in the Coptic language.

In the law of persons juristic persons are occasionally encountered; in Ptolemaic and Roman times there is evidence merely of associations of individuals (ἔρανοι) for the common welfare. In later times ecclesiastical corporations appear as the subjects or objects of legal rights. Natural persons were either slave or free, and the intermediate state of debtor slavery is perhaps evidenced by a Ptolemaic ordinance (διάγραμμα) on slave sale taxation and certainly is present in an antichresis deed (παραμονή) from Dura. The birth registration of both the free born and slaves for tax and citizenship purposes is found as well as censuses at prescribed times. The slave was both man and *res* in the law and as the former was capable of owning property to a greater extent than in the Roman law. Slavery was terminated in Greco-Egyptian law by will; by sale to a god (this device was of Greek origin but rare); by manumission before a state notary granting freedom under the protection of heaven, earth and sun; by herald's proclamation when accompanied by payment of the ἐγκυκλίον tax; and, finally, by official order as a reward for denouncing criminals. A peculiarity of Greco-Egyptian law was that a part owner could partially manumit a slave, which was contrary to Roman law. The concept of citizenship before the *constitutio antoniniana* (partially preserved in a Giessen papyrus, 212 A.D.) is quite complex. Alexandria was a city-state and dissociated from the rest of Egypt, the χώρα. Accordingly special laws governed citizenship in that community even in Roman times, as is evidenced by the Gnomon of the Idios Logos, and the dispute between the pagan Alexandrians and the Jews resident there. In the χώρα besides the distinction pertaining to the citizens of Greek (or Macedonian) blood there was one also between the native Egyptians and the so-called Πέρσαι τῆς ἐπιγονῆς, whose exact character is in dispute: the theory generally accepted considers them descendants of foreign military colonists. A striking departure from Greek, Roman and Alexandrian law is to be noted in the Cyrenaean constitutional provision granting citizenship to a person born to a Libyan mother and a Greek (Cyrenaean) father. It is practically universally held that the enactment of Caracalla (212) granting Roman citizenship to all free subject peoples possessed of sufficient property is presented by the Giessen papyrus, although there still exists controversy as to the character of the excepted dediticians. The Greco-Egyptian family law was distinguished by the role played therein by the materfamilias. Adoption was fairly frequent but its object was not potestas but rather the transmission of the adopter's property to the adopted child. In Byzantine times the ἀποκήρυξις, or exclusion of a child from the family, occurred as a disciplinary measure (it is also present in the Syrian Roman Law Books). In Ptolemaic marriage law there appears to be an interesting distinction between ἔγγραφος (written) and ἄγραφος (unwritten) marriage. The former was a full marriage; the latter, developed from ancient Egyptian law, was an inferior type, in which dowry and the marital property contract were absent. Besides the dowry there were given in later times παράφερνα (feminine furnishings), ἔδνα (*donatio propter nuptias*) and ἀρραβών (*arra sponsalicia*). Documents attest divorce and show that actual separation had already taken place. Special provisions regulate soldiers' marriages. Greco-Egyptian law knew but one type of guardianship for minors (ἐπίτροπος); the age of majority was probably twenty years. The general guardian of a woman (κύριος) was limited in his powers, and *tutores ad actum* were frequent. Very early in Roman times in Egypt women acted as guardians, particularly of their minor children.

The exact order of intestate succession in Greco-Egyptian law has not been ascertained, but it seems to have been ordinarily on the agnatic principle. The intestacy statute of Dura is based on a parental system somewhat similar to that of the Syrian Roman Law Books. Testate succession in Egypt can be roughly grouped into two types: by will, which was primarily Greek in origin, and by parental division, which was of Egyptian origin. Like ancient Greek law Greco-Egyptian law did not originally have universal succession, but it was instituted in Roman times. Minors might not make wills, and women only through their guardians. Clerics in Byzantine times had capacity to make wills and receive bequests, while the joint wills of spouses were frequent. No holographic will is known. The witnesses to a will did not need to know its contents, and revocation took place only if speci-

fied in the new will or if the old will was destroyed. The dispositions were of all types, including bequests of usufruct, substitute legacies and directions to satisfy obligations. The parental division might be by deed with immediate or *mortis causa* effect, revocable or irrevocable. A second type of parental division was the bilateral contract between the spouses to serve familial aims. If accomplished in the presence of the children, there was a binding disposition (κατοχή) to the children, irrevocable without their consent. If the children were not present, the division seems to have taken effect upon the death of either of the spouses. While these bilateral agreements were generally the marital contracts of the spouses, they were sometimes contained in the marital contracts of the children.

The law of obligations was almost entirely a law of contracts, for the field of torts was handled by minor officials in administrative proceedings. Hellenistic law clearly differentiated between movables and immovables in the contract of sale. Native Egyptian law, as evidenced by the demotic documents, employed two deeds in the sale of immovables: a "deed for silver" (πρᾶσις), setting forth the terms of the contract as well as the acknowledgment of payment by the purchaser, and a "conveyance" (ἀποστασίου συνγγραφή) executed by the vendor. Similarly, Ptolemaic law utilized two deeds in these immovable cash sales (ὠνή and ἀποστασίου συνγγραφή). In Roman times, however, there appeared the one-document sale (also illustrated by the Avroman parchment of 88 B.C.), combining the elements of the two deeds in a single καταγραφή or παραχώρησις instrument. Declaration of sale, receipt of price, assumption of risk and βεβαίωσις, or warranty against eviction, were formulated in various types of documents, which were subject to recording. Actual transfer was never necessary to complete the sale nor even *traditio per chartam*. Earnest money (ἀρραβών) was sometimes paid but was merely evidence of the obligatory force of the contract. In sales of movables a distinction was made between sale of slaves and of other objects. The former approached the sale of immovables; the latter did not need to undergo δημοσίωσις; that is, it was not made public. Sale of futures, such as future crops, is met with but is generally in the form of a loan of money repayable in grain; the latter was still the practise among the Copts in Arabic times. As contrasted with sale, lease was relatively informal; the terms were usually set forth in a petition (ὑπόμνημα) to the lessor and the lease was generally not made public. Other types of *locatio conductio* agreements included apprentice contracts, work contracts, generally for skilled labor, and land or river transport (freight) agreements (compare the Medamoud inscription dealing with women as wholesale shippers). Loans were common; they were often secured by pledges and were generally with interest, which, however, could not exceed the amount of the capital. Sometimes repayment in services replaced that in money (antichresis). A maritime loan, in which a portion of the profits accrued to the lender, is remarkable in that it was without interest. In personal suretyship the suretor (ἔγγυος) in contrast to Greek law was normally an accessory debtor; but where he had simply guaranteed to produce a person, the suretor merely promised that the latter would appear. There was a clear distinction between personal liability and property liability. The pledge of movable things (ἐνέχυρον) was rare in Greco-Egyptian law, but the mortgage of real property, of which there were three types, was very common. The sale secured by mortgage (ὠνὴ ἐν πίστει) was really a fiduciary alienation in which the debtor had possession and use, the creditor ownership of the property; but although evidenced by a Dura deed it was far less important than the more complex hypothec and hypallagma. These were not really mortgages in the modern sense, since the idea behind both of them was ultimate substitution of the property for the debt; that is to say, if the debtor did not pay, the property vested in the creditor irrespective of its value. It was, however, usually provided that in the event of the partial or complete destruction of the property there should be a right of personal execution against the debtor. The hypallagma, of Egyptian rather than Greek origin, differs in practise from the hypothec only with respect to the right to the so-called summary execution. The presence of an executive clause (καθάπερ ἐκ δίκης) in a loan contract resulted in personal and property execution as though a judgment had been rendered. Yet it did not give rise to pure self-help, for the debtor, after the creditor had recorded his petition (ὑπόμνημα), might answer by ἀντίρρησις, in which case normal litigation followed. Where a debtor did not answer, two courses were open to the creditor depending upon whether the creditor held a contract with executive clause without security or secured by hypallagma or a contract secured by hypothec. In the first case,

where the debtor had been notified of the recording of the petition and had failed to answer, the officials charged with execution were authorized to seize the pledged property (κατοχή), for which, as soon as its seizure was entered in the land register, a notarial document of conveyance (καταγραφή) was executed; a final series of operations involving various petitions and notifications put the creditor into actual possession. In the case of hypothec the procedure was greatly simplified. Finally, it should be noted that oaths were sometimes employed to found obligations and that there was direct agency, as is attested by numerous powers of attorney.

Apart from the topics of state domains and recording only a fragmentary picture of the law of property is presented. One papyrus presents a collection of materials on prescription; the Alexandrian municipal law contains provisions on the rights of adjoining landowners, boundaries and coownership; and there is also some material extant on easements. Byzantine times saw a development of the long term inheritable lease (emphyteusis). The doctrines relating to state domains, particularly in Ptolemaic times, deserve particular examination. As early as the third century B.C. the government granted land to Greek settlers (κάτοικοι) or to allotment holders (κληροῦχοι). Originally there were two types of κλῆρος grants: temporary, terminating when the grantee was withdrawn from military service, and perpetual, that is, for life. In addition the cleruch received the σταθμός, or soldier's quarters, which in later times could be alienated. Toward the end of the Ptolemaic era the land of the cleruchs, now identifiable with the κάτοικοι, could be inherited and then alienated by means of a fictive loan; finally in Roman times it could be alienated under the supervision of designated officials. The military officers in Ptolemaic times received imperial land as δωρεά, which could be let out to king's peasants, individual lessees or even cleruchs. Temple land also belonged to the king; in early times it was dedicated to the gods, but later the ecclesiastical authorities had to pay a fixed rental for such estates, which were held in perpetuity. Imperial lands continued in the Roman era but were in great part replaced in late Byzantine times by large landholdings of private persons and the church, which were worked by means of the institution of the colonate.

The recording of transfers of interests in real property and of the sales of slaves has already been mentioned. According to a recent but generally accepted view the private documents of sale together with affidavits were sent to the record office, which thereupon examined the land register. If it found the title of the vendor clear, the record office dispatched a notice to the public official charged with the execution of official documents (the ἀγορανόμος), who thereupon issued a public document of sale (καταγραφή), which the record office when notified in turn entered in the land register. Special legislation sometimes provided that notices of ownership be sent to the record office by all landowners. The land register itself was made up of a geographical list as well as personal folios. Survey rolls of all the owners of the district, in alphabetical order, were known as the διαστρώματα. It was thought formerly that entry therein constituted priority of claim, but now it is held that it controlled the acquisition and possession of taxable objects and that priority of title depended upon the καταγραφή itself. The land registry system played a very important role until the end of the third century.

With the exception of Cyrene little is known of the law of civil procedure outside of Egypt. There, however, three periods of development may be clearly distinguished: the procedure of Ptolemaic times, the *cognitio* procedure of Roman times and the libellary procedure of the Byzantine epoch. A Ptolemaic civil procedure ordinance regulated the course of trial, but to what extent is not exactly known. Recently there has been discovered a demotic civil procedure ordinance containing provisions on the efficacy of documents and oaths in the trial. The Ptolemaic court organization is better known, although as far as Alexandria is concerned little more than the names of the courts survive. There were the courts of the χρηματισταί and λαοκριταί as well as the third and early second century κοινοδίκιον and ten-men courts. In 118 B.C. Ptolemy Euergetes II enacted legislation providing that trials between Greeks were to be held before the χρηματισταί and those between Egyptians before the λαοκριταί; where the nationality was diverse, the language of the document upon which the suit was based was to be decisive. In addition to these courts a number of officials (e.g. στρατηγός, ἐπιστάτης) acted in a judicial capacity in administrative and criminal matters. There were also tribunals with special jurisdiction. Civil litigation was instituted by a petition (ἔντευξις) to the king, either personally delivered to him or directed to him through the strategus or through the χρηματισταί court. In

the first case a king's court might decide or delegate to the strategus or χρηματισταί court. In actual practise, however, very few petitions ever reached the king. Complaints were presented to the χρηματισταί by recording in the court's register or by marginal notation upon the complaints when originally sent to the king. The λαοκριταί (and sometimes during its existence the κοινοδίκιον) court received the case when the strategus after preliminary examination so decided or when the plaintiff directly presented it to them. The ten-men court and the Alexandrian δικαστήριον entertained trials where a private oral summons attested by two witnesses was read before them together with the complaint. In addition to the ἔντευξις there existed a petition (ὑπόμνημα) to the strategus for administrative cases and a notification to the same official for criminal cases. Summons was public, semipublic or private; and in the issuance of the first, which was the most common, the mysterious πράκτωρ ξενικῶν (also an execution officer) figured. Of the trials in the various courts little is known: oaths played a great part in the λαοκριταί tribunal; execution was regulated by the procedural διάγραμμα and was either personal or real. In addition to the executive clause in certain contracts which led to summary execution there were other types of clauses. While the so-called *cognitio* procedure, which developed out of the Ptolemaic, prevailed in Egypt in Roman times, the formulary procedure was in use among the senatorial provinces of the eastern Mediterranean. In the course of time it became more and more a pure state procedure. The new element in court organization in Egypt was the system of circuit courts, which lasted until Diocletian. The highest judicial official was the *praefectus Aegypti*, the head of the normal judicial system. In addition there were the ἀρχιδικαστής, who acted as the middle instance between the strategus and prefect; the strategus, with police and administrative competence and in charge of cases of voluntary jurisdiction; and, finally, the *juridicus Alexandriae* with special competence in the city of Alexandria. The petitions to the strategus and the other minor peace officials did not in the main lead to judicial litigation but were intended to enable the petitioner to retain certain rights or secure certain forms of official intervention. Judicial process was introduced either by a private summons, obligating the defendant to appear before a particular term of the circuit court, or by a petition personally delivered to the prefect; in this case the latter notified the subordinate, who was to subdelegate the case or handle it himself. Normally the trial was before a judge delegate (*judex pedaneus*) who received instructions, not a formula, from the prefect. The judgment was not the Roman money condemnation; and both real and personal execution, the former specific (not like the Roman *missio in bona*), were handled by the πράκτωρ ξενικῶν. In other respects also much of the Ptolemaic procedure was retained in the Roman epoch. After Diocletian there was less delegation, more settlements (διαλύσεις) were made and the libellary procedure became the normal method. After extrajudicial demands upon the defendant had been made, the plaintiff addressed a *libellus* (βιβλιόν) to the office of the *praeses* (governor). After an examination of the complaint an *exsecutor negotii* (public defender) was assigned to the defendant to answer (submit an ἀντιρρησις) or deny the cause of action. The later course of the proceedings reflected practises of the Roman epoch. In Byzantine times also there is found the *episcopalis audientia* as well as the administrative tribunal of the *defensor civitatis* (ἔκδικος), who now replaces the strategus as addressee of petitions. Coptic documents of late Byzantine and Arabic times show an increase in the number of arbitrations and settlements.

The Cyrenaean inscriptions are the most important non-Egyptian sources of criminal law. A Laconian inscription dealing with treason and a criminal action for violation of sepulchers in a Nazareth inscription are also significant. Culpable, malicious acts (ἁμαρτήματα) and nonmalicious acts (ἀγνοήματα) were the two classes of crimes in Ptolemaic law; the view that crimes were classified into private, tax, imperial public and sacral crimes is now rejected. Murder (φόνος) was malicious or negligent; personal injury (ὕβρις) led to a criminal action; the Alexandrian law of personal injury differed from that of the rest of Egypt. Certain acts of public violence (βία) and intentional extortion by officials (διασεισμός) were crimes. Theft, injury to property, whether malicious or negligent, particular frauds and the giving of false testimony conclude the list of private crimes. Illegally evading taxation was criminal, crimes against regal monopolies and domains were punished, and violating an asylum was a sacral crime. Single officials and certain courts such as the χρηματισταί had criminal competence. Private crimes were subject to police or court procedure; special trials were provided for the rest. Death

and imprisonment were relatively infrequent; fines and confiscation were the usual penalties. Under the Roman regime there was apparently no decided change. More categories were added to the crime of physical violence, with public whipping as the penalty. Pederasty and incest were considered crimes against the communal interest. The circuit court of the prefect had judicial power, while various minor officials exercised police jurisdiction. Whipping and condemnation to the mines were added to the punishments previously existing. The Byzantine epoch more clearly separated private and public crimes, but there was little change in the substantive law. The falsification of weights and the clipping of coins were important fiscal crimes, while in early times Christianity and later heresy constituted public crimes. The separation of civil and military authority led to two criminal processes; bail and rescript procedure were novelties in the former. Punishment depended on the status of the accused, whether he was of the lower (*humilior*) or the upper (*honestior*) classes of society.

A. ARTHUR SCHILLER

GERMANIC. Germanic law is the law not of modern Germany but of the Germanic peoples, that is, of the tribes called Germans or Teutons because of their language and origin. Although they belong to the Indo-European family of races, an admixture of stocks had taken place among them. When they first appeared on the stage of history they were divided into a large number of tribes; only by means of comparative research has it been possible to obtain an idea of "primitive Teutonic law." But it is no more possible to establish the existence of a primal Aryan law than of a primal Aryan race or language.

The custom of classifying races according to their languages and of denoting their relationship according to that of their languages leads to fundamental misconception, since the racial affiliations of a people often disagree with those of its language; and it is equally misleading to draw conclusions as to the kinship between the laws of two peoples from their linguistic relationship, for language families do not always coincide with jurisprudential groups. Ficker has investigated this point in the history of Germanic law. In general the antiquity of Germanic law is a great aid to the investigator; the law of the Germanic peoples is as fundamental to comparative law as is Sanskrit to comparative philology.

The principal Germanic tribes were the North Germans, or Scandinavians (Norwegians, Swedes and Danes), the East Germans (Goths and Burgundians) and the West and South Germans (Germans, Frisians, Lombards, Angles and Saxons). All their legal records date from the period after their conversion to Christianity; there are only slight vestiges of a heathen, pre-Christian law. Conversely, some German legal concepts have been adopted in the law of the Christian church. Such institutions as are shown by comparative law to be common to all the Germans are found also in part among the ancient Romans and Greeks as well as among the Celts and Slavs. It must not be concluded, however, that borrowing, dependence or interrelationship is involved in each of these cases. It would be a mistake to look upon Germanic law or the legal concepts common to all the Germans as specifically Germanic. Germanic law has nevertheless a characteristic physiognomy of its own.

The basic principles of the Germanic legal order are peace and freedom. Peace must prevail in the great juridic community of the people as well as in the smaller special groups: in the various clans, among the bodies of retainers, kinship groups and guilds. The concept of peace leads to mutual aid and adaptation as a matter of course; mutual loyalty arises from the same concept. Even the relationship of domination, the *munt*, partakes more of the nature of protection than of force. In the Germanic state there was no right without a corresponding duty. The individual owed duties particularly to his equal associates, for as a rule it was not the individual who had a sole right but the majority or even the totality of each group. The future generations, the unborn, had equal rights also: gratitude and reverence accorded the ancestors involved care and consideration for those to come so that the chain of members of the clan stretched from the past into the future. The individual possessed rights solely as a part of the whole group.

This social nature of the law in turn automatically generated legal concepts which must be described as politico-economic. The farmstead must be the economic basis of a kinship group; hence the scope of the transient owner's rights was not fixed by his personal interests but by the needs of the farm. Thus the farm became, so to speak, the legal subject. This explains why in many cases the customary law often provided that the ablest rather than the oldest should inherit. When the Germans first appeared, the

economic implications of their legal system were wholly those of a peasant and shepherd people. The "romanticism of sloth" and the savage barbarism of the Germans are both fables. Dopsch's researches emphasized and more recent prehistoric investigations and excavations have proved that wherever the Germans came in contact with Roman civilization they did not destroy it but continued it, amalgamating it with their own. The catastrophe theory has no longer any basis in fact.

Unlike Roman or modern law Germanic law does not contain the distinction between *jus publicum* and *jus privatum* which is so much a matter of course today. But this distinction, which cannot be maintained everywhere with strict rigidity in present day society, could far less have been maintained in a society which always kept in mind the whole, whose view of things was from the standpoint of the entire community and for which all law was a unity.

The cooperative structure of the clan is clearly exhibited in family law. The paterfamilias exercised a certain protective power over his wife and children and over the other kindred living under his roof. But the inclusive tutelage of the clan set limits to the exercise of his power. The position of woman as wife and mother was one of dignity. Many scholars enlarge upon wife purchase and conclude that the bride was an object of barter; but it is more correct to differentiate wife purchase from the capture and seizure of brides as a contractually concluded marriage, in which the bridegroom is obliged to compensate the previous guardian of the woman for the transfer of guardianship. Besides full marriage there was also a freer *Friedelehe*, based solely upon the agreement of both partners in the marriage. Under this form of marriage the wife did not come under the *munt* of the husband. Matriarchal law never existed among the Germans, nor can it be deduced from the passages always cited from Tacitus.

A characteristic of the Germanic law of things is the strict distinction between movable and immovable property, between chattel goods and land. Whereas the goods and chattels, usually movable and transitory, merely served the temporary needs of individuals, the real property was to serve as the permanent basis of existence for generations or for cooperatively associated communities of various types. Moreover all the landed property belonged to the people; it was the national territory. It was thus but natural that the legal transfer of landed property should be subject to all sorts of conditions and careful limitations. This was all the more necessary since public rights of various sorts were often bound up with land tenure. The difference in the legal treatment of landed property and of chattels is exhibited both in the transfer of possession and ownership and in the protection of possession. While a symbolical livery of seizure was possible in the case of lands, an actual physical transfer was necessary in the case of chattels. A voluntary relinquishment of possession destroyed the seisin of a chattel. A third party who in good faith acquired possession of a thing which had been entrusted by the owner to another was protected against the owner. This rule was recognized because of the supervening interests of society.

In primitive times caste or rank groupings among the Teutons were rather simple, as the large mass of the people consisted of freemen, who, as the only fully qualified citizens, formed the nation. As a result of the need for symbols in the ancient law the freeman wore physical marks of distinction (as, for example, long hair) and bore the customary weapons as an outward symbol of his full rights wherever he acted as a free man, as in all meetings and legal transactions. The original Germanic nobility was a nobility of birth, which as such possessed no privileges. But its relationship to the gods endowed it with higher value and hence entitled it to higher wergild in case of killing as well as to greater credibility. Constitutional evolution led to a differentiation of rank; between the fully qualified common freemen and the unfree, who had no rights at all, arose intermediate classes of half freemen enjoying different rights. Moreover there appeared a new nobility by virtue of profession and office, while the ancient nobility died out. Social rise and fall and all the shifts in rank were occasioned to no inconsiderable degree by the change of economic conditions as well as by the system of feudal tenure with its distinctions of rank. Liberty, in the Germanic sense of the term, did not mean independence and freedom from obligations: it was chiefly manifested in obligations. The obligations of military service and of judicial service were the greatest rights of a freeman; the protection of the law and of the state were among his duties. In later times the concept of freedom was linked with the idea of a special legal position and with freedom from certain economic burdens or taxes.

In the Germanic state sovereign power was vested in the people united in the popular as-

sembly; at the beginning there were no rulers even in those states which had kings. The ancient Germanic king merely maintained peace and led the army in battle, but he was held responsible for defeat in war as well as for crop failures. Only at a later date, particularly in the Frankish empire, did the absolute monarchy develop, with its rights of lawgiving, hereditary succession and divisibility of power.

Germanic criminal law is characterized especially by the clear conception that the legal order is a system of peace. Crime is an act which breaks the peace; hence the natural consequence is the offender's loss of freedom and the cessation of peaceful protection of his person and property. He who breaks the peace is "without peace"; he is abandoned to the feud and the vengeance of the injured party. It follows from the concept of cooperative association, which permeates all of Germanic law, that the clan had to aid the injured party in pursuing the evildoer. Likewise, the offender's clan had to grant him protection unless it cast him out of its ranks. Warfare between the clans was ended by expiation, the payment of a fine and wergild and by solemn proclamation of the new state of peace. Grave offenses which involved breaking the peace of the whole people made the offender an absolute outlaw. "One without peace" could be hunted and killed like any beast of prey; he was called a "wolf" (*vargr* in Old Norse) and the forest was his refuge. Shameful offenses which provoked the ire of the gods were punished by death; it was proper for offenders in such cases to be sacrificed. The subsequent evolution of criminal law led to modifications of outlawry; an entire system of particular penalties evolved. Furthermore private criminal law, as manifested in the feud and in vengeance, was displaced and supplanted by public criminal law after centuries of conflict between the two systems. Finally, a long road had to be traveled before the primitive concept of responsibility for external consequences and the sole distinction between a deliberate act and an accident—*viliaverk* and *vathaverk* in Old Norse—were further differentiated and the concepts of attempt, complicity, negligence and the like developed. In ancient times, for example, the offenses committed by women or servants were considered unpremeditated accidental actions like anything "caused by a rooster's spur or a dog's tooth."

Germanic legal procedure is a conflict of parties, a proceeding between opponents. Only if they cannot agree upon the various steps in the procedure (for example, as to means of proof) do they call upon the court for a determination. It is the duty of every member of the legal community to defend a charge. Thus Germanic legal procedure is governed by the principles of party presentation of defense, and particularly of orality, publicity and strict formality. Legal procedure as well as execution and distraint was in the hands of the contending parties. The clan was also obligated to aid in legal disputes, especially by providing oath helpers; for the contending party's oath had to be reenforced by the testimony of a number of witnesses who were required to swear that it was clean. Every trial might finally end in a duel. In heathen times the oracle was used as evidence in certain circumstances, while Christianity introduced trial by ordeal. At bottom this was a question directed to the Omniscient after all other sources of knowledge had failed. The principle that "where there is no complainant, there can be no judge" was annulled in the Carolingian period by the establishment of the inquisitorial procedure. The judge began to take charge of the conduct of the trial as well as of execution of sentence. Trial procedure underwent really profound changes when the principles of Roman and canon law procedure, the latter based to a large degree upon the former, were adopted. But the vitality and capacity for development of Germanic legal concepts are proved by the fact that the modern trial by jury arose from Germanic roots.

In the Germanic laws there are written, oral and objective legal monuments: legal sources, legal language and objects of legal significance. The written records are either records of the laws or documents and formulae, depending upon whether they set up a theoretical principle of law or apply the law to the individual case. The language of the law is instructive and interesting not only in connection with the investigation into the evolution of technical legal expressions but because it is contained in formulae and proverbs. Many of the ancient legal sources are in metric form or even in rhyme; Sievers called them "verses of the law." The objects of significance in legal affairs, such as legal symbols, personal emblems, coats of arms, instruments of punishment and court buildings, are a fruitful field for legal archaeology.

At the beginning Germanic law had no writings; it depended upon oral tradition. Its custody and true enunciation were the duty of the "law speaker" (in Swedish *laghma ther*). In the period of written records the law was preserved

in the impressive poetic form already mentioned. Even then, however, the unwritten customary law applied alongside the enacted law. The law handed down from the Germanic forefathers, in close agreement with custom and beliefs, was looked upon as immutable despite the fact that the community often made decisions which codified and changed the law.

The folk character of the law is manifested not only in its close connection with the rest of popular tradition but in the sensuous element prominent in it. In addition to the vigorous, plastic language legal acts were marked by vividness and by a wealth of formulae, symbols and gestures. This made all legal actions audible and visible, thus insuring legal transactions even without writing.

The oldest surviving Germanic law—preserved only in part—is the code of the Visigothic king Eurich, dating from the latter half of the fifth century. Its influence was felt far beyond its place of origin, since it was used by many other Germanic lawgivers; it may be traced through Salic, Bavarian, Burgundian and Lombard law. Among later Visigothic laws there is the *Lex romana Visigothorum*, which applied to the Romans of the Visigothic kingdom and was based upon Roman law. Then there is the *Lex Visigothorum*, which was intended for all the subjects of the Visigothic kings and which has come down to the present in several versions dating from the seventh and eighth centuries.

Chief among the laws of the Frankish rulers because of its age and its importance is the *Lex salica*, the law of the Salian Franks. It dates from about the beginning of the sixth century but was subsequently considerably enlarged. Laws of other German tribes under Frankish rule correspond to it: *Lex ribuaria*, *Lex Francorum Chamavorum*, *Lex Thuringorum* (*Angliorum et Werinorum*), *Lex Bavariorum*, *Lex Alamanorum* and *Lex Saxonum*. The two High German codes are very closely related; the oldest code of Charlemagne for the Saxons shows the rigorous hand of the conqueror upon the subjugated tribes. The Lombard codes, which commenced with the Edict of Rothar of 643 and were continued by the later kings, Grimoald, Liutprand and their successors, are clearer and more comprehensive. In their language as well as in their form and content the Lombard laws show the influence of Italian culture and of Roman law. Only a few Germanic words are found in the Latin text of the Germanic laws mentioned above. The most important are the old Frankish words in the *Lex salica*, the *Malberg Glosses*, which still leave many problems to be solved.

Compared with the continental, Anglo-Saxon laws have many advantages. In addition to their number and inclusiveness they afford much more direct insight into Germanic legal affairs from the sixth century because they were written in the native tongue. The Germanic tribes who emigrated to Britain—the Angles, Saxons and Jutes—finally merged into one people, and their law, which also shows traces of North Germanic influence, became amalgamated also. When the Normans conquered the island they brought with them a new law, West Frankish rather than North German in character. The oldest Anglo-Saxon laws date from the period of the independent kingdoms of Kent (beginning with King Aethelberht) and Wessex (King Ine), whereas the law of the Anglian king Offa of Mercia has not been preserved. After King Alfred founded his great kingdom he established a common law. Among subsequent lawgivers Athelstan, Ethelred and especially the great Canute deserve mention. The Anglo-Scandinavians at first had their own law, whose name was applied to the region settled by them: Denalagu.

Among the German tribes the North Germans excelled in the art of legislation. Although those of their law books which are extant are much younger than those of the South Germans cited above—none of them is older than the twelfth century—they surpass their southern parallels in purity, originality and antiquity as well as in number and scope. Like the Anglo-Saxon legal records they employ the native tongue. Most of them are the work of private individuals, i.e. law books in the proper sense of the term, but they are the "written record of an ancient and officially administered tradition," the *lagsaga*, the speaking of the law. There are four Norwegian regional laws: *Eidsifathingsbók*, *Gulathingsbók*, *Frostuthingsbók* and *Borgarthingsbók*; a large number of Swedish laws: the *Westgötalag* is the oldest, the *Östgötalag* the most extensive, and there is also the law book for the island of Gotland—the *Gutalag*—as well as many others; and, finally, a number of Danish legal antiquities, which are similar in character to the German law books of the thirteenth century. On the island of Iceland, where the course of Germanic settlement may be traced from its very beginnings (about 870) and where the state arose out of the temple associations of the gods, a number of legal antiquities developed from the *lögsaga*. But neither the first Icelandic

code, the *Úlfljótslög* (930), nor the *Haflidaskrá* (dating from the winter of 1117–18) is extant; there exist merely collations dating from the thirteenth century, the so-called *Grágás*. The *Jarnsída* and the so-called *Jónsbók* (1281), which has remained in force down to the present day, are of later date.

During the Frankish period the number of legal sources was still limited. This state of affairs changed with the advent of the (German) Middle Ages. Tribal laws were superseded; special regional and local laws arose everywhere; imperial laws, such as the public peace laws (*Landfrieden*) of Mainz of 1235 and the Golden Bull of 1356, are rare. The rise of city laws and of rural village laws is of importance; several thousand examples of each of these have been preserved. The city laws—interrelated and thus classifiable in family groups—owe their origin and development to the flourishing markets and trade and to the development of separate urban communities. The rural laws, or *Weistümer* (annual declarations of official usages made by the elders in the village assemblies), deal principally with the laws of landownership in the village, with the mark association and relationships between neighbors. Both urban law and *Weistum* are partly authoritative in origin and partly independent. As a rule the *Weistum* is marked by a more naïve form and an older content; often it is comparable and in many ways related to other types of folk poetry, the saga and the fairy tale. But the difference between urban and rural conditions at that time was not too great to permit of the application of urban law to rural communities also, both in the east and in the west. There developed moreover sovereign territorial and local laws, among the latter the Frisian codes, famous as gems of Germanic legal poetry, and the Swiss. The private law books of the thirteenth century, the *Sachsenspiegel*, the *Schwabenspiegel* and the like, enjoyed extraordinary repute and wide application. The *Sachsenspiegel* was applied in part down to 1900. Some of the French legal sources, especially the so-called *coutumes*, may also be considered Germanic in origin.

In its subsequent development Germanic law, which was often a mixed product even in its origin, adapted itself to cultural changes, legal needs and economic advances, but it was influenced also by foreign laws. The chief foreign influences were the Roman and the canon law and in much lesser degree Celtic, Slavic and Jewish law. Roman law influenced German law at the time of the great migrations and during the rule of the Franks, but its influence was even more profound during the period of its scientific reception in Germany; that is, during the fourteenth and fifteenth centuries. In fact when the regulations of the imperial court of justice (*Reichskammergericht*) in 1495 prescribed the application of Roman law by the judges, the domination of foreign law in Germany resulted; native law was forced into the background. Often enough German legal concepts were expressed in a Roman form because the latter was held to be the only possible one. Only gradually and only after the seventeenth century did a German science of law evolve; despite its alliance with natural law it did not succeed in winning its way during the great works of codification of the eighteenth century. The nineteenth century brought with it a new wave of reception, against which Gierke and others strove valiantly, but by no means wholly successfully, during the drafting of the Imperial German Civil Code of 1900 (*Bürgerliches Gesetzbuch für das deutsche Reich*). But in the twentieth century much of the old legal material has been reawakened to new life, especially through the social concepts of agrarian law, the law of association and the like.

Not only was Germanic law subjected to outside influence and the reception of foreign law; the process has been reversed, and it has itself penetrated abroad, in turn influencing foreign law in a surprising manner First of all, it is known that vestiges of Visigothic law can be found in Spanish and Portuguese law, and not merely in the old fueros. Lombard legal concepts are still alive in Italian law. With the expansion of the English world Anglo-Saxon legal principles have covered the earth. French law (Frankish and Norman) penetrated to lower Italy and Sicily as well as to Greece and to the crusaders' states of the Near East during the eventful history of the Mediterranean basin. Likewise German law accompanied East German colonization in the rise of the Hanseatic League throughout the Baltic. The German, whether merchant, artisan, knight or peasant, took his law with him; and in foreign countries the natives often adopted it, as was the case with the Czechs, Poles, Russians, Ukrainians, Magyars and others. The past few years have seen the deliberate adoption of German codes in the Far East, especially in Japan and China. The wholly Germanic Swiss Civil Code has recently been adopted by modern Turkey.

EBERHARD VON KÜNSSBERG

SLAVIC. The original home of the Slavs was probably in Polesia or on the plains to the east of Polesia. The laws by which they were governed were the proto-Slavic laws, out of which all the laws of the Slavic nations later developed. Since no direct documents of proto-Slavic law survive, it can be reconstructed only on the basis of a comparison of the legal institutions of the later Slavic peoples. The Slavs left their early home in the second or third century A.D.; about the sixth century those who had migrated westward had reached the Elbe and the Boehmerwald: they were the so-called western Slavs. The second branch, the eastern Slavs, who had gone southward, had reached the Balkan Peninsula, the Aegean Sea and the Adriatic. The writings of western European, Greek and Arabic writers dating from this period offer some indications as to the structure of the Slavic law.

Although the Slavic tribes had already become differentiated, they had not yet formed larger national groups. Under the pressure of the German Empire, the Slavic tribes farthest to the west became slowly Germanized. Those situated between the Elbe and the Oder were thus unable to create a larger organism. Little or nothing is known about the laws of these Slavs or of those included in what later became Austria. After the attempts at political organization of Samon (623–58) and the Great Moravian State (890–905), the Bohemian and Polish states were organized among the western Slavs in the tenth century. In the ninth century the Russian, Bulgarian and Croatian states had been formed. The Serbian state was finally established in the eleventh century. Two of these states owed their organization to foreign invaders—Russia to the Varegs and Bulgaria to the Bulgars.

In these six states law began to develop from proto-Slavic elements and long continued to evidence numerous analogies. But except in the one case of Russia this development was later interrupted when these states came under the rule of foreign governments which set aside the basically Slavic laws. The Croatian state endured for the shortest time, one part yielding to the pressure of Hungary at the end of the eleventh century, and another, Dalmatia, coming under the rule of the Hungarian king in 1420. Henceforth Croatia, joined in personal union with Hungary, preserved its legal distinctness only to a limited extent. Serbia had as early as 1394 admitted dependence upon the Turks, who in 1459 occupied the country and converted it into a Turkish province. Bulgaria lost its nationhood in 1396 and likewise became a part of the Turkish state. In 1526 Bohemia was joined with Austria in a personal union and finally after the battle of White Mountain in 1621 lost almost every vestige of independence, although for a while it was able to retain its own laws and courts. The partitions of Poland by Austria, Prussia and Russia in 1773, 1793 and 1795 respectively, ultimately led to the extinction of the native law. Only the Muscovite state managed to retain its political independence throughout the centuries and to impose its laws upon extensive territories.

Elements of Slavic law are to be sought also in the non-Slavic nations which took over the legal institutions of their Slavic populations. This was the case in Hungary, in Moldavia and Wallachia, and in Lithuania; the latter in the fourteenth and fifteenth centuries occupied considerable stretches of Russian territory, and later united with Poland, taking over a number of Polish legal institutions including some in the sphere of court procedure. There are many Russian and Polish elements in the so-called Lithuanian Statutes of 1529, 1566 and 1588.

On the other hand, even during their independence the laws of the Slavic states were subject to the influence of foreign laws. The legal institutions of the Frankish state, the first in western Europe to form a political organization, exerted a profound effect upon the political laws of Poland and Bohemia. A considerable influence, especially on the personal marriage code, was wrought by Roman Catholic canon law and further, directly or indirectly through the canon law, by Roman law. Stronger still was the influence of the laws of the Italian cities on the town laws of Croatia. Roman-Byzantine law and the canon of the eastern Orthodox church were important in the development of legal institutions in Russia, Serbia and Bulgaria.

In all these countries legal relations were regulated almost exclusively by usage. This may be ascertained from the sources of older legal practise, from documents, or from registers of usage, the latter being particularly valuable in that they fix a previously created legal status, often going back to a much earlier epoch. Extensive and numerous registers of usage have been preserved, especially in Bohemia. The oldest, part of which dates from the thirteenth century, is usually called the Book of the Lord of Rosenberg; the author is unknown. The second register, the *Ordo judicii terrae*, is in Latin, but it exists also in Czech as *Řád práva*

zemského; the latter version dates from the middle of the fourteenth century and is probably earlier than the Latin. About 1420 *Výklad na prdvo země české* was copied by Andrew of Dub. All these registers contain pure Czech laws and are free from foreign influences save for the Roman legal terminology in the Latin text of *Ordo judicii terrae*. The last register of Czech laws and the most extensive was *O prdvach země české* (1508), the work of Victor Cornelius of Všehrd. It was systematically planned and comprised all branches of law.

Although as early as the thirteenth century the Bohemian monarchs had begun to consider the codification of the Bohemian law, the written form of the project did not appear until the reign of Charles IV (1346–55); entitled *Majestas carolina*, it contained 127 paragraphs, comprising the whole sphere of Bohemian law and showing some Roman law influences. As a result of the opposition of the nobility, however, this codification was not published, although it was known later and sometimes even applied. The first published Bohemian codification appeared in 1500 and is known as the Statute of King Vladislaus. It was republished and expanded in 1530, 1549 and 1564. The latest codification, the *Verneuerte Landesordnung* of 1627, included public law and civil law ordinances, the latter already very much under the influence of the Roman law which in Germany served in that period as the common law (*römisches Gemeinrecht*).

In the eighteenth century the Bohemian law was rapidly being eliminated. In 1707 Emperor Joseph I issued for all the Bohemian crownlands a criminal code based upon the sixteenth century ordination of lower Austria. In 1768 the Austrian criminal code (*Constitutio criminalis theresiana*), in 1781 the Austrian code of civil procedure and in 1811 the Austrian civil code (*Allgemeines bürgerliches Gesetzbuch*) were introduced into Bohemia. Thus the last vestiges of Bohemian court law were removed.

In addition to the documents which date from the twelfth century, the chief sources of the old customary law of Poland are the court records, which began to appear at the end of the fourteenth century. Unlike those of Bohemia, the most important of which were burned in Prague in 1541, the Polish court records were preserved with great care, and there are extant tens of thousands of volumes from the Middle Ages to the fall of the old Polish Commonwealth. The registers of the customary law in Poland were less extensive than in Bohemia. The oldest, dating from the second half of the thirteenth century, originated in what is now Eastern Prussia, at that time occupied by the Teutonic Knights; it was written in German for the benefit of the cloister clerks who applied this law to the Polish population settled there. In addition there have been preserved several registers of fifteenth and sixteenth century court law from the various sections of Poland.

To a certain extent the Statutes of Casimir the Great constituted a codification of Polish law, chiefly the court law. This was not one law, but two: one each for the two chief sections, *Wielkopolska* (Greater Poland) and *Małopolska* (Lesser Poland). The statute for Greater Poland appears to be only a register of the old customary law, while the statute for Lesser Poland contains innovations and shows slight traces of Roman law. Both include decisions from all branches of court law, later supplemented in greater detail, as well as a collection of prejudicates, the work of a private hand. These component elements which made up the Statute of Casimir the Great were adopted in the course of the fifteenth century in other sections of the Polish state. While no codification of the court law of the entire state was ever effected, two projects were worked out (one, *Correctura jurium*, between 1532 and 1534; the second, prepared by Andrew Zamoyski between 1776 and 1778); only the judicial procedure was codified and published in 1523 as *Formula processus judicarii*. The law was codified in two parts of Poland, Mazovia (*Mazowsze*) and Royal Prussia (Prusy królewskie). The extensive Mazovian codification was based chiefly on registers of the Mazovian customary law in 1532, published in a second, slightly altered version in 1540. In Royal Prussia the diet (Sejm) of 1598 published a code under the title *Correctura terrarum Prussiae*, which modified the laws there in force in the spirit of the Polish law. Mazovia, however, renounced its code, with the exception of a few ordinances, and acceded to the Polish law. The Statutes of Casimir the Great were supplemented by the Warta statute and by special regulations from the sphere of private and criminal law as contained in the statutes of the fifteenth century and subsequently in the laws passed by the diets from 1493 to 1793. In addition to the legislative ordinances the norms of the customary law possessed validity in the field of court law.

For Croatia, which was most subject to the influences of Italian legal culture, there are

early legal sources. While the oldest documents date from the end of the ninth century, Croatia had no major legal documents outside Dalmatia, where statutes markedly affected by Roman law were issued for certain districts, cities and villages.

In Serbia written sources for native law appeared much later, although there had long been in use Serbian translations of the monuments of the Eastern church law. As early as the end of the ninth century a collection of laws of the Greek church, entitled *Nomokanon*, was translated into Old Church Slavonic and copied in the middle of the ninth century by John the Scholastic, but the second part, which contained the regulations of the secular law, was omitted. This *Nomokanon* spread to Bulgaria, Serbia and Russia. In Serbia the entire later *Nomokanon* (of 1159 to 1169) was translated about 1219 together with the norms of the secular law; the latter were derived from the Novels of Justinian and Alexis Komenos and from the Eclogue of Leo, chiefly from the so-called *Procheiron* (Handbook of Roman law, published about 879 by Emperor Basil of Macedonia), which was known also among the Slavs as *Gradski zakon*. This translation reached Bulgaria and Russia. In the middle of the fourteenth century an arrangement of ecclesiastical law which contained many norms of secular law was translated into Serbian. While in the first half of the fourteenth century there was made a Serbian compilation of Byzantine law based especially on the so-called village laws as well as on the regulations of civil and criminal law. Such written sources of Serbian law as are available were of later origin. The only extensive monument of Serbian law, the codification of King Stephen Dušan, dates from the fourteenth century; it contains regulations from the whole field of court law and shows the influence of Roman-Byzantine law. While an overwhelming part of the regulations represents the Serbian customary law there are also new regulations, especially with regard to procedure. A revision of this code was undertaken at the beginning of the fifteenth century.

Little is known of the laws which were valid in Russia before the *Russkaya pravda*, for many centuries the most important written source of Russian law. Formerly regarded as a codification, it is now considered rather a register of customary law which utilized also a few of the shorter laws of the princes beginning with Jaroslav (ninth century). There are two distinct versions of the *Pravda*: the older version, containing about fifty concise articles, was written in the twelfth or possibly even in the eleventh century; the second version is much more voluminous, for it includes almost all the articles of the first version, usually with revisions and alterations, as well as a number of new articles, especially in the field of court law. While the first version is confined for the most part to native Russian law, the second shows the effects of the eighth and ninth century Roman-Byzantine law, particularly of the Eclogues of Leo and Constantine, the *Procheiron*, and the *Epanagog*, as well as an excerpt made from an eclogue under the spurious name of the Law of Constantine the Great. There are indicated also certain points of contact with Germanic law, probably the Norse laws of the Varegs. Moreover the second version profits from the decisions rendered later by the grand dukes, as well as from the court decisions.

Subsequent legal documents which are now characterized as law codes date from the fifteenth century. Of the *Sudnaya novgorodskaya gramota* (Novgorod codification), which dates from about the middle of the fifteenth century, only a fragment is extant. The extensive codification of the principality of Pskov (*Pskovskaya sudnaya gramota*) bears the date of 1397; this is probably an error, and the date should be altered to 1467, although the codification may include an earlier one from the fourteenth century. While it made use of earlier laws it was in the main based on the customary law. In 1497 Grand Duke Ivan Vassilyevich issued as a law for all Muscovy the so-called *Sudebnik* (68 paragraphs), which contained primarily rules of procedure, but also criminal and civil regulations. He drew from the Pskov codification and from the *Russkaya pravda* as well as from custom. The *Sudebnik* of 1550 was a revision and extension of the previous one and likewise dealt chiefly with procedure. Finally in 1648 a voluminous codification of Russian law was published by Czar Alexis Mikhailovich (*Ulozhenie Tsarya Alexeya Mikhailovicha*), which contained all branches of court law. This code did not contain pure Russian law; it was strongly influenced by Roman-Byzantine law. Numerous regulations are borrowed from the Third Lithuanian Statute, which in its turn had taken over to a large extent the regulations of Polish law. Attempts to codify the laws of Russia were renewed throughout the entire eighteenth century but were unsuccessful, and finally a systematic collection of Russian laws entitled *Zvod zakonov* was

published in 1832; French law exercised a strong influence on the private law section.

In their original homeland the custom of marriage was already established among the Slavs; reports of sexual communism do not deserve credence. Polygamy was permitted but was practised generally only by the wealthy. Marriage was contracted most frequently by purchase, although marriage by capture was known. Subsequently the relation of marriage was entered into by contract; purchase survived, however, until much later. Marriage was rendered valid by two legal acts. The first was the agreement between the clans to which the husband and wife belonged, and after the breakdown of the clan ties, between the man (or his father) and those to whom the woman was subject, for she had no voice in the transaction. Once the contract had been confirmed the second legal act took place; this was the surrender of the woman to the man in execution of the contract. The act of transfer contained three component parts: the chief act of giving the wife to the husband amidst wedding solemnity, the transportation to the husband's home, and the *pokładziny* (*depositio in torum cum viro*). This last, however, was not as important as among the Teutons. The negotiations were accompanied by various formalities and ceremonies of a symbolical character, traces of which are still to be found in Slavic folklore; they have been studied in connection with the history of Polish law, for several of them were significant in law. First there was the handshake of the partners to the union, which signified the confirmation of the contract. Another important convention was the exchange of the garlands which they wore as crowns, effected either by the bride and groom or by a go-between (later, under the influence of church laws, rings were exchanged instead of garlands); this custom of exchanging garlands held on for a long time, however, and even after the acceptance of Christianity it was adopted into the church ritual and was still practised in the sixteenth century. The bride drank a cup of water, probably as a sign of her agreement and as a witness against herself. As a pledge that the bride would remain subject to the new husband, the bridegroom was given the wedding twig, although the exchange of garlands seems to have superseded this ceremony. As a symbol of the bride's separation from the clan to which she belonged and of her liberation from its authority or, as others would have it, as a symbol of her adoption by her husband's clan, the hair on her temples was cropped. The bride's head was covered with a veil or the bridegroom's cap was placed on her head; this latter custom, which prevailed in the eastern parts of Poland and was known also in Russia, constituted a sign of the assumption by the husband of power over his wife. The new couple partook of cheese and bread in common, and in all Slavic countries save Poland the bride untied her husband's shoes. And finally there was the wedding feast.

After the acceptance of Christianity the wedding contract was conceived, under the influence of the church law, as an engagement, and the transfer as a conclusion of the marriage. The southern Slavs took over the ecclesiastical wedding forms by accepting the principles of the Eastern Church. The western Slavs did not adopt immediately as a general custom the performance of wedding ceremonies in the presence of the clergy, for it was not then a requirement of the Roman church. In Poland, where the change came latest, marriage *in facie ecclesiae* was not established until the fourteenth century.

In the primitive Slavic law the wife was subject to the husband's authority; she left the clan to which she belonged and went over to her husband's. The original treatment of woman as property was expressed in the frequent burning, or killing by other means, of the widow, who was buried together with her husband as an object of personal property. Marital fidelity bound the wife, not the husband; and children by concubines were usually treated equally with the legitimate children. The husband possessed considerable freedom in dissolving marriage, traces of which persisted after the adoption of Christianity in Bohemia and Poland as late as the twelfth century. Polyandry as well as *snochactwo* (the cohabitation of the father with the wife of a minor son until the latter's majority) were in general exceptional and were common only in Russia, although they were encountered as late as the sixteenth century.

The marital property laws of the northern Slavs (Bohemian, Polish and Russian) showed great similarity throughout the entire mediaeval period, while the southern Slavs had early adopted the regulations of the Roman law. Among the northern Slavs the father or the nearest male relative gave the bride a dowry including personal articles and a sum of money. On the other hand, the husband guaranteed his wife a certain sum, confirmed by contract. From the sixteenth century these laws were modified.

The law of inheritance was developed fairly

late among the Slavs. As long as there was family community, there was no inheritance in the narrow sense, for the estate continued as the property of the members of the clan or family united into a community. On leaving the household a son received from his father a part of the estate, while losing his right to the rest of it. The father was not obliged to make such disposal, however, unless he remarried. The estate left behind by the father fell undivided to the sons, although originally the father was allowed to divide it among his sons in accordance with his own will. Later the sons received equal shares. A married daughter did not participate in the inheritance, but an unmarried daughter had the right to demand support and, if she married later, a dowry equal to that of a daughter married during her father's lifetime. Originally daughters could not inherit real estate even if there were no sons, for in such a case real property fell to the more distant male relatives. Later they acquired the right to inherit land, but only if it was not clan property. In Lesser Poland the Statute of Casimir the Great permitted daughters to inherit family goods if there were no sons; later this provision spread to other sections, but until the sixteenth century male relatives had the right to buy up such goods. After the mother's death the children, regardless of sex, had equal rights. Relatives in indirect line participated in the inheritance according to the degree of relationship. The right to bequeath property was developed under the influence of Roman and ecclesiastical law, for wills were originally unknown to Slavic law. In Poland inherited real estate was in principle inalienable.

Since Slavic law was necessarily agrarian in nature, it developed regulations concerning the ownership of land, but was defective in the development of the law of obligations, which appeared later as a result of the influence of Germanic and Roman laws. Property originally belonged to the entire clan. The southern Slavs carried out the principle of community ownership in the creation of the so-called *zadruga*, which comprised over twenty members, all of whom claimed descent from a common male ancestor. Land was owned and tilled in common, and its products were consumed in common. The *zadruga* was found among other Slavic peoples, the Czechs, Poles and Russians, but it was at its strongest in the south. While it had generally disappeared during the Middle Ages, it survived in Montenegro, Bosnia and Herzegovina until the nineteenth century. Wherever the *zadruga* did not exist, ownership in common among the Slavs was combined with individual family holdings, perhaps reassigned every year, and separate living quarters and consumption. Although common ownership disappeared among these Slavs, vestiges remained in the *jus proximitatis*, which did not permit the clan lands to be alienated without agreement by the relatives; in case such alienation had taken place, the relatives could seize the land, originally without even indemnifying the new owner. This law remained in force in Poland until 1768.

When there came to be less and less unowned land, however, there began a strict delimitation of the boundaries of real property. Borders were fixed (in Poland as early as the fourteenth century) and marked by blazing or by mounds and stone barriers. The right of ownership, nevertheless, was not as exclusive as among the Romans. Especially on Russian territory the idea of service, as, for example, wood cutting, was highly developed. Not until the sixteenth century did these rights begin to be limited. While Roman property laws early reached the southern Slavs, the idea of clan ownership and *jus proximitatis* persisted for a long time.

A characteristic trait of the law of obligations among the northern Slavs was that the contract did not impose the duty of fulfilment until it had been specially confirmed. Originally the confirmation was probably by sacral sanction and later by oath. In the historical period a pledge, originally given by the relatives, was favored. Newer methods of confirmation were received from the west. Other contracts, such as those for security, rent and the like, were developed in a later period; although their forms were similar among the various Slavic peoples, they did not spring from a common source but had their genesis for the most part in the reception of foreign laws.

Criminal law is better known than other branches of Slavic law. The primitive institutions which developed among the proto-Slavs long remained in force. While it is known that among the early Slavs the right to punish within the clan lay with the clan authorities, the system of punishments is unknown. Especially in Polish law traces of this clan authority long remained in the right of the father to punish members of the family; until the fifteenth century the father was responsible also for the infractions of his children. In interclan relations the principle of self-help predominated. A wrong

whether "civil" or "criminal" called for revenge on the part of the person wronged. Retribution was not regulated by the strict principle of *lex talionis*, and the result often led to protracted conflicts. A wrong suffered by one member of a clan was looked upon as an offense against the whole clan, which thus sought revenge not necessarily against the wrongdoer alone but against the clan to which he belonged; often entire clans were exterminated in this manner. Attempts to limit such feuds were the fixing of fines, the restriction of revenge to the guilty person, the introduction of the obligation of warning the offender that vengeance would be sought, the prohibition of vengeance in certain cases and finally the encouragement of peaceful settlement and investigation in the courts.

The earlier version of *Russkaya pravda* insisted upon the right to avenge, but in the second there is no mention of it. In Bohemia vengeance figured in the monuments of the fourteenth century. In Poland individualized vengeance still occurred in the sixteenth century, and the law of 1588, which made punishable the declaration of intention to retaliate, still managed to leave the execution of the intention free from state punishment. In the customary law vengeance was retained up to the nineteenth century among the southern Slavs.

Instead of retaliation the clans often made an agreement of reconciliation; this was effected by mediators, who set the terms. Reconciliation consisted of "humiliation" and "ransom." Humiliation was a symbolical execution of retaliation: a person guilty of homicide went barefoot, clad only in a shirt and bearing a sword about his neck, to the nearest relative of the deceased, to whom he handed the sword, which the relative then brandished above the offender's head, thus indicating his right to deprive the guilty man of his life. "Humiliation" evidenced many sacral elements, which may be accounted for by the influence of ecclesiastical law, as in general among all nations where retaliation is practised. In addition to moral satisfaction, humiliation provided for material satisfaction in the form of articles or money, the amount depending upon the greatness of the inflicted injury; the sum paid in the case of homicide was known as "head payment." In each particular case the amount was fixed, but subsequently as society became differentiated, the payments were fixed by custom according to social position. In a later period the amount of the head fee was confirmed by registers of the customary law or even by legislation, as in the Statutes of Casimir the Great. Humiliation was abandoned before ransom, which gradually became transformed into the damages of private law.

After the rise of state authority the state began to investigate certain offenses in its own name. In the beginning, however, the number of these offenses was small; they were offenses against the state, the military forces, the treasury, religion and public order. Other offenses were investigated only following an accusation of the injured party. In Poland especially this principle was strictly observed, and even in the case of homicide it remained until the partitions of the old Polish Commonwealth. Only after 1588 did the state intervene as a subsidiary when the relatives did not enter an accusation. The state extended the number of offenses to be investigated by the authorities; this was already noticeable particularly in the *Zakonnik Dušana* under the influence of Roman-Byzantine law, in Croatia and Bohemia under the influence of western European nations, and in Russia perhaps under Tartar influence; it was in Poland that the old elements were retained for the longest period. Survivals of retaliation are still to be found, however, in more recent times. The killing of a thief caught in the act was free from all punishment, according to Russian, Bohemian and Polish law. In Bohemia an attempt was made at the end of the twelfth century to remove this exception, whereas in Poland it survived to the end of the eighteenth century, but only in the case of a thief of grain caught and killed at night by the owner of the grain or by his people.

The criminal laws of the individual Slavic nations took over from the original Slavic law and gave still wider application to the principle of collective responsibility in offenses investigated by the state. This responsibility appears as the responsibility of a group of people linked by blood, as in the clan or family, or by territorial propinquity. Clan responsibility was retained longest in Poland; it was abolished by Casimir the Great, but such vestiges as the responsibility of children for the offenses of the father continued until the modern period—in cases of heresy, until the sixteenth century, of treason and lese majesty, until 1791.

The responsibility of territorial groups was characteristic of the mediaeval period throughout Slavdom. Such a group was constituted either by the *vicinia* (*okolica* in Serbia, *opole* in

Poland), which comprised a number of settlements, or the village. The territorial group was materially responsible for an offense such as homicide or theft committed on its territory if the malefactor was unknown, if the inhabitants did not wish to give him up or to punish him, or if the malefactors were not promptly run down. This responsibility had appeared in the *Zakonnik Dušana* and the Wiślica Statutes; in Poland it continued still longer and spread to the towns. In the Polish cities it often took the form of "representational punishment," as when city aldermen were sentenced to death.

Primitive responsibility was of an objective nature; the factor of guilt was not considered. A master was responsible for his children, his domestics and his animals, and a property owner was responsible even for his possessions; the owner of a pond, for example, was held responsible for homicide if a person drowned therein. As was general in the history of criminal law, this responsibility in the course of time assumed a strictly individual character, and even then only in case of subjective guilt.

In early Slavic law court procedure came to be accepted in case of quarrels within the social group. The trial began to take the place of retaliation when the power of the prince was made permanent and government offices were established. This occurred earliest among the southern Slavs and in Bohemia, latest in Poland. According to the Statutes of Casimir, if the loser did not wish to submit to the verdict, the court turned him over to the plaintiff, who lost his claim if he allowed the loser to escape. Execution then was in the hands of the parties, and it was not until the fifteenth century that execution was assumed by the court. Even then, however, the parties to a contract might make the reservation that in case of nonfulfilment the loser had the right to execute his claim.

From the fifteenth century on sources for Slavic law are more numerous. Considerable differences now developed and only in a few cases is it possible to find analogies which may be supposed to have a common origin. Because of widespread illiteracy the oral principle naturally obtained, as did that of public sessions. The principle of accusation also was general; if a prince were involved he seated the judge in his own place and stated his own complaint. It may be accepted as certain moreover that the primitive period was characterized by formalism. Some of the means of evidence may be considered common to all Slavic law. Among them are the oaths of the litigants, which possessed a sacral character, and which were naturally later adapted to the rules of the Christian religion. A vestige of an older period perhaps is the oath by the sun, which was a practise in Bohemia in the fourteenth century and in Poland in the fifteenth and traces of which remained among the southern Slavs and in Russia. Among all the Slavs until the fifteenth century the judgment of God was a means of evidence; in Serbia there was the ordeal by hot water, by fire, by hot iron; in Poland there were in addition the judgment by duel and the cold water ordeal; in Russia and Bohemia the duel and the ordeals by water and iron were common; among the Slavs on the Elbe the duel and the ordeals by iron and by boiling water were practised.

STANISLAW KUTRZEBA

CELTIC. Of legal institutions among the continental Celts before they became subject to the Roman Empire little is to be learned from ancient writers and that only incidentally. The episode of Orgetorix, as related by Caesar, shows among the Helvetii an established judicial system supported by the executive power of the state. Caesar also records that as a mark of favor he restored to the Atrebates their own rights and laws. He also observes that these peoples, dwelling on the eastern frontiers of Gaul and exposed to constant danger of invasion, were noticeably less advanced in civilization than the other Gallic states of the central and western regions.

For a knowledge of Celtic law ample in scope and detailed, dependence must be placed mainly on the written records of the ancient laws of Ireland and of Wales. The Welsh code was drawn up in the tenth century under Howel Dha, who united the various principalities of Wales under his own rule. In their existing form, however, the Laws of Howel Dha represent a later redaction and exhibit very markedly the influence of feudalism as established in England and in parts of Wales by the Norman-Frankish invasion. The Irish law tracts are more purely Celtic in tradition, much wider in scope and richer in detail, and they go back in written form to the seventh century and to a Celtic regime undisturbed by any external force except the peaceful invasion of Christianity. The most important of them is the *Senchus mor*, the principal ancient collection of Irish law, dating at least from the ninth century.

The Druids of an earlier age were transformed

in Christian Ireland from the fifth century onward into a class of professional men of learning called *filidh*. These were the accepted authorities on all subjects of national learning, including law, history and genealogy, grammar and poetry. Like the Druids they taught in schools and gave permanent form to much of their teaching by means of versification, so that their name *filidh* is commonly translated into English as poets. The oldest writings on Irish law point clearly to an older tradition of oral teaching, coming down to the seventh century. They usually take the form of question and answer, a studied mnemonic phraseology, with rules and terms grouped as it were in litanies, with passages here and there in archaic verse. The language of the oldest written tracts was already becoming obscure in the ninth century and was explained by glosses interlined or added in the margins of manuscripts. The older tracts are usually accompanied by commentaries of various dates. In these under the guise of explanation the ancient doctrines are often adapted and developed.

Irish law like Roman law was a learned law and was molded into bodily form in the hands of jurists, and this juristic law was supplemented by legislative enactments. Ireland like other countries in the Indo-European tradition was divided into many small states, each forming a separate jurisdiction with a complete if simple apparatus of executive and judicial administration and also of legislation. The *filidh*, however, like the Gallic Druids of Caesar's time, were regarded as belonging in common to the whole nation, and the law expounded by them was equally applicable in all the states. Irish law was thus one jurisprudence in many jurisdictions. It has this character of universality in the oldest records of history and tradition. Moreover since the oldest documents exhibit not only a didactic form but a long existing classification into matters and separate books and chapters, with numerous other juristic refinements, it is a capital error, although it has been a common one since Sir Henry Maine, to seek in them a record of purely primitive customary law, even though the jurists were never weary in asserting as the basis of their doctrine the custom of the *feni*, the freeholders of Irish land.

The earlier Irish jurists had a peculiar fondness for objective detail, for cataloguing the acts and facts to which the rules of law were held applicable. Incidentally thus the early Irish law tracts provide in great variety the parts from which, when they are duly assembled, there may be formed a fairly ample description of the manner of life of an ancient community. This community is typically European as distinguished from Mediterranean. In the Mediterranean regions the vigorous Indo-European stock came under the powerful influences of Egypt and Crete and Phoenicia and developed a civilization based on walled cities. The continental Celts became somewhat Mediterraneanized—Plutarch writes that they defended eight hundred walled towns against Caesar's legions. In Ireland, when Irish laws were first recorded in writing, there was not one such town. Each of the eighty or ninety small states into which the nation was organized was purely a city of the fields. The whole community lived on and by the land. The nobles were a higher grade of agriculturists. The rural organization of society represented in the law tracts must be almost in the pure line of development from an older form of common European society on a rural basis. Its structural institutions—the small state; the assembly; the court; the kingship uniting the functions of head of the court and assembly, judge, military commander, probably also at one time priest; the organic unity of the group of families within a limited zone of kinship—these and other features of the social system reflected in Irish law are likely to have their roots in a prehistoric order common to the ancestral Indo-European stock before the era of its expansion (which is still in progress) had begun. It is to be noted that this ancestral stock before its dispersion practised tillage on no small scale by means of the plow drawn by a team of oxen. Hence it is a cardinal error in studying the laws and institutions of any branch of this stock from the standpoint of historical jurisprudence to start from an a priori notion of a primitive stage of society, such as the stage of pastoral nomadism.

In each *tuath*, or state, the freeholders were the normal and typical class to whom the franchise belonged. They were the freemen, who had the right of participation by presence and voice in the conduct and regulation of public affairs. To the same franchise, however, were admitted by virtue of profession certain other classes: the members of certain crafts recognized as free or liberal—a remarkable concession when it is considered that in Mediterranean civilization the craftsman was always a slave—men of learning and churchmen. But to be without franchise, except in the case of slaves, did not

imply privation of civil rights. The rights of those without franchise could be made effective and their wrongs could find remedy through the action of freemen to whom they were attached by some form of legal nexus; women and children, for example, were assisted by heads of families, clients by their patrons, tenants by landowners, men of the unfree crafts by the freemen who employed them, aliens by freemen who had formally taken them under protection.

The sons, grandsons and great grandsons of one male ancestor constituted the *derb fine*, or true family. If one of these died without issue, his property became divisible among the others in fixed proportions, a brother inheriting a larger share than a first cousin and so on. Compensation for the homicide of a kinsman was divided in like proportions. If a kinsman defaulted or became insolvent in respect of his legal liabilities, these were shared in the same proportions among the *derb fine*. The ordinary law of kinship governed succession to kingship. When a kingship became vacant, all those who were sons, grandsons or great grandsons of the last or any former king became eligible to succeed and the successor was chosen by election from among them. Property was owned in severalty by members of a kin, and each member was free to dispose of property acquired by himself but could be inhibited by his kinsmen from diminishing the joint property of the kin or from involving it in loss by damnifying contracts.

A notable feature of ancient Irish law is the favorable status which it accords to women. Women could own and inherit property in land. Marriage from the point of view of property and industry was an economic partnership. If the partnership ceased, the wife retained her right to the property which she brought into it and also to the increment arising from her share in the concern. Generally speaking, the husband was manager of the land and the wife manager of the household and of the domestic industries, such as dairying, spinning and weaving. Moreover the position of women in Irish law cannot rightly be ascribed to juristic ideas of equity. It is fully reflected in the saga literature, which is a storehouse of prehistoric tradition. Its origin may be traced to a pre-Celtic population of Ireland and Britain, the Pretani, better known by the name of Picts, among whom the family and kin were based on maternal and not as among the Celts and other Indo-Europeans on paternal descent. A man "married into" the family and kin of his wife, and inheritance, including succession to political authority, passed in the maternal line. It is likely that the order of Druids was also of Pretanic origin. The ethnic relation of the Pretani to other peoples of western Europe has been the subject of much speculation.

The movable and exchangeable wealth of the country was chiefly in the form of cattle. When a landowner had a surplus of wealth in cattle—it might also be in other things of value—he could dispose of it as capital, *rath*, loaned to other landowners who required it. The contract of giving and receiving capital created between the two parties a legal nexus so similar to the nexus of patron and client in Roman law as to indicate a common origin. In terminology the lender became *flaith*, political chief, to the borrower, and the borrower became *ceile*, companion, to the lender. The contract was deemed advantageous to both. The chief became entitled to a large interest on the capital, to various services, refections and reliefs, to the presence of the client under his command on military service and in his retinue at public assemblies. The client became entitled to the protection of his legal interests by the chief, who acted as his representative, advocate and spokesman, in the public courts and assemblies. A man could be at the same time client of a chief and chief of other clients. There is some superficial resemblance between Celtic clientship and feudal vassalage, but the differences are fundamental. Clientship was a personal contract between two individuals, terminable by death or at the will of either party under terms fixed by law. Under the feudal system the man who became a vassal bound himself and his heirs forever and ceded a superior ownership of his land, of which thenceforward he and his heirs became tenants.

A characteristic feature of Irish law is the constant effort to fix an arithmetical value, relative or positive, in ratio or in fixed amount, for rights and liabilities of almost every kind. This is well exemplified in the case of honor price. An offense against the rights of a freeman incurred a twofold liability, equivalent restitution for his material loss and reparation for the wrong done to his dignity. The second element, honor price, varied according to the status of the injured person. Its amount was predetermined by the classification of all freemen in defined grades of status. The general basis of classification was wealth, chiefly in land and livestock. There were several grades of freemen according to the measure of their wealth, and for freemen of each

grade there was a fixed honor price. Most freemen became clients, and the amount of capital in the contract of clientship was fixed for each grade. When a patron acquired ten or more clients, he rose to a higher zone of status as a ruling noble; and within this zone again there were grades of status, each grade having its definite honor price, the graduation being based jointly on wealth and on the number of clients. Certain powers and privileges, for example, the right of protection over aliens, varied in the measure of honor price. Refusal to submit to adjudication or to fulfil a judicial award involved loss of honor price. Thus the institution of honor price operated as a check on the tendency of powerful nobles toward arbitrary conduct in disregard of the law. Grades of status and honor price commensurate with the grades of ruling nobles and freemen were fixed for ecclesiastics, professional men of Irish learning and of Latin learning and men of the liberal crafts.

The law of contracts was elaborated in much detail by the Irish jurists. They distinguished between a simple contract, *cor* or *cor bel*, "contract of the lips," and a secured contract, *cundrath*. This recognition of an informal contract may be regarded as remarkably advanced. There were various kinds of security, and the precise difference between these as well as their manner of operation awaits full investigation. *Raith* (distinct from *rath*, capital advanced to a client), in later usage *trebaire*, appears to mean the simple guaranty of a third party; like surety in English the word often denotes the person guaranteeing. This person must be a freeman of the same *tuath* as the contracting parties. Accordingly in juristic language a freeman in his own *tuath* is called *aurrath* (later *urrad*), meaning literally one who is capable of becoming surety on behalf of another, while a freeman in a *tuath* not his own is called *deorath* or *deorad*, signifying that he is there incapable of becoming surety. *Giall* and *aitire* both meant hostage, but there was some distinction between them. Hostages could be given and taken in some kinds of civil undertakings between fellow citizens. There were elaborate provisions as to distress.

The office of judge in litigation belonged normally to the king of a *tuath*, with the assistance of an expert jurist (*brithem*, or brehon, usually translated as judge; hence the term Brehon Laws). A brehon was competent to adjudicate in a suit referred to him by the parties. With this form of adjudication in view various modern writers have supposed that judicial decisions under Irish law had no executive sanction and were made effective only by the force of public opinion, so that judgment by a brehon would have been a form of consensual arbitration. It was unlawful, however, for a brehon to hear a suit without having first taken adequate security for the fulfilment of his award. The error of attributing the judicial function solely to the brehons has led to another illusion, repeated by many modern writers; namely, that Celtic law took no cognizance of crimes, regarding all illegalities as torts. Some foundation for this misconception may be seen in the very wide range of offenses which could be atoned by compensatory payments in Celtic law, but the error arises from ignoring the criminal jurisdiction of kings, of which the evidence is abundant. Even in the case of torts persistent lawbreaking and contumacy rendered the offender a criminal, involving penalties varying from loss of status to capital punishment. Moreover there were even means of exercising exterritorial jurisdiction, a frequent necessity in view of the small territorial extent of the Irish states, which did not average more than about 400 square miles in area. Two methods of determining the issues by process of law when the parties to a dispute belonged to different jurisdictions are indicated. An agreement to establish a common jurisdiction, *cairde*, might be formulated between the kings and ratified by the assemblies of each state. In the absence of such agreement the authority of a superior king could be invoked, to whom the kings of the respective states were in a definite manner subordinate. There is indeed little truth in the notion that Irish law was a rude tribal system of law.

EOIN MACNEILL

CIVIL. *See* CIVIL LAW.

CANON. *See* CANON LAW.

COMMON. *See* COMMON LAW.

ISLAMIC. *See* ISLAMIC LAW.

CHINESE. Although in China as in all other countries public law made its appearance long before private law, the most ancient known documents contain important moral rules concerning marriage or succession. Whether these rules were regarded as laws in the Judaeo-Greco-Roman sense can be determined only by a study of philosophical tendencies in ancient China.

Confucianism holds that the prince worthy of the name has no need for laws in governing. Chief of men by virtue of the mandate of heaven, his example alone shall teach. But how does he discover what rules of conduct to lay down? The Chinese have always believed in a universal natural order existing in the heart of man as well as in the physical universe. Their cosmogony establishes correspondences between the five human relations (*wu lun*)—of prince to subject, father to son, husband to wife, elder brother to younger, friend to friend—and the five planets, the five sounds, the five metals, the five cereals, the five colors. An immense role was always assigned to magic, horoscopes, the action of elemental influences and the like. There is an interaction between the natural order of the universe and that of the moral world. For man to conform to the natural order is to show respect to the general laws of the universe, but it is also to stir them to action, to give them an opportunity to manifest their nature. For example, it is natural in winter to cover oneself with thick clothes and in summer to wear fewer or thinner clothes. The ancient Chinese thought that if one were to reverse the actions, the seasons would not be normal and correct. Man's mistake would react upon the order of the universe. Throughout Chinese history the bad sovereign is precisely the one who by his misconduct troubles the universe.

The *Chung yung*, a Confucian book, begins by stating that heaven has put the natural law in the heart of man; the "way" (*tao*) consists in living in conformity with this law; man is kept in the way by teaching, which the wise sovereign spreads by permitting men to discover in themselves the eternal relationships. The process is thus described in a celebrated text of the *Ta hsüeh*: "The ancient princes who desired to light up the Universe with shining virtues began by governing their country well. Desiring to govern their country well, they began by ruling their family. Desiring to rule their family, they began by perfecting their own character. Desiring to perfect their own character, they began by making their heart right. Desiring to make their heart right, they began by making their intentions sincere. Desiring to make their intentions sincere, they began by increasing their knowledge. Increasing their knowledge consisted in thoroughly understanding things. Things being mastered, their knowledge became complete. Their knowledge being complete, their intentions were sincere. Their intentions being sincere, their heart was made right. Their heart being right, their character was perfected. Their character being perfected, their family was ruled. Their family being ruled, their country was well governed. Their country being well governed, the whole empire was at peace."

Thus the good functioning of the social and juridical organization rests wholly upon the sovereign's personal worth, his ability to grasp the laws of universal harmony and teach them by example. This is *jên chih chu i*, or government by men, because the government is identified with the sovereign's personality. In a society founded on duties flowing from natural relations (*wu lun*) taught by an enlightened sovereign order does not depend on laws. The duties are divined by observance of rites (*li*, best but not satisfactorily translated by the German *Sittlichkeit*), which associated with music suffice to police the empire of the south.

This conception of law was reenforced by the special characteristics of primitive Chinese logic. According to the theory of the "rectification of names" (*chêng ming*) formulated in the *Lun yü* (XIII: 3): "If names are not correct, language will not conform to the reality of things and affairs cannot succeed. If affairs cannot succeed, rites and music cannot flourish. If rites and music cannot flourish, punishments will not be inflicted justly. If punishments are not inflicted justly, people will not know how to move their hands and feet. Consequently, the sage deems it necessary that the names we use should be correctly employed, and that what we talk about should be rightly put in practice. What the sage desires is that in one's words there be nothing incorrect." This theory was especially developed by Hsün Tzŭ and Yin Wên Tzŭ and greatly influenced the Confucian analysis of the notion of law. Under this aspect it pertains less to the substance of law itself than to its formal intellectual enunciation. In addition to being a logical theory it is, especially in Hsün Tzŭ, an ethical conception, for it is in seeking to rectify names that one can rectify one's conduct. In the work of Hsün Tzŭ (*Chêng ming pien*, ch. xxii) is set forth the Confucian notion of law, founded upon belief in the universal natural order and the possibility of maintaining and observing this order by giving things their exact definition. But the theory of the rectification of names did not lead to the forms of reasoning indispensable to imperative notions of law and the establishment of a complete positive legislation. As in the quotation from *Ta hsüeh*, the formulations are always so-

rites, a form of incomplete and degenerate syllogism. Generalization, abstraction, the reduction of a great number of concrete cases to unity, in a word the belief in the principle of identity, are absent from Confucianism; and hence the legists of this school have at their disposal only a very simple, even simplistic, technique of legal interpretation. The triumph of juridical reasoning in China during the traditional period is the employment of a method of analogy, *tui li chieh shih*, carried to its utmost terms.

The Confucianists were early opposed by the philosophers of the School of Laws, or *Fa chia*, whose conception is infinitely closer to the Judaeo-Greco-Roman conception. It considers as illusory the proposal that the sovereign govern by example and without sanctions. For the notion of government by men, *jên chih chu i*, it substitutes that of government by law, *fa chih chu i*; the law, *fa*, is thus opposed to rites, *li*. The sovereign's personal qualities are irrelevant, since he is only to see that abstract laws formulated as rigorously as possible are observed. The conceptions of this school of legists inspired a number of statesmen and ministers of the "Fighting Kingdoms," furnished an essential contribution to the elaboration of Chinese juridical theories and resulted in the founding of the first absolute kingdom, that of Ch'in, in 225 B.C. Strict codes and laws were promulgated, bringing protests from the disciples of Confucius.

Despite the efforts of the legists, however, the Confucian conception came to dominate all ancient Chinese legislation. The literary examinations killed the technical disciplines, thus hindering the formation of a class of professional jurists. Law became fundamentally one of custom. Everything pertaining to the law of contracts and commercial transactions was abandoned to the free creation of custom. There was a resort to legislation only where the public order was vitally concerned. But even this expressed only those teachings of the past, that conformity of moral and natural order, that experience of wise sovereigns, which constituted the ideal of "government by men." Only because the texts of the ancient imperial legislation on the family or succession had their origins in the oldest rituals did they evoke the adherence of primitive Chinese mentality. Administrative and penal law were also thoroughly codified in the interest of an ordered state. Another consequence of the influence of the Confucian conception was the extraordinary continuity between Chinese codifications. The various dynastic codes preserved very ancient rulings, which were no longer applicable, because they derived from a system formerly held in great honor. To this day the law does not have in China the imperative character that it has in the West. It is still regarded as a model which will be imitated more easily the greater its conformity with universal natural order.

The struggle between the Confucian conception and that of the legists has left its mark upon the whole evolution of Chinese law. If the Confucian writings and rituals are not sources of the law in the modern sense of the term, their instructions or prescriptions have in fact often had the value of positive rules. Thus the poetry of the *Shih ching*, the narratives of the *Tso chuan* and the discussions of the *Li chi* were often basic in ancient Chinese juridical life. When the Supreme Court of China had to apply rules on repudiation a few years ago, it cited the relevant ritual text.

Very early, however, and despite Confucianist objections the various kingdoms of the middle country enacted codes. Regarding the most ancient codifications, such as the Book of Penalties in nine chapters (1050 B.C.), the chapter "Lü hsing" of the *Shu ching* (952 B.C.), the various codes of Ch'in of Chêng; and the *Fa ching* of Li k'ui (*c.* 400 B.C.), there are available scattered items of information in ancient literature. The early Chinese encyclopaedias and dynastic histories are valuable in tracing the development of Chinese law. A modern work, the *Chiu ch'ao lü k'ao* of Cheng Chu-tê, covers the legislation of the dynasties between 206 B.C. and 618 A.D.

The method and plan of the later imperial codification are already foreshadowed in the early codes. The T'ang Code (653), which was in fact the first complete imperial legislative monument and was destined to serve as a model for all others in form and essence, marks the maturity of ancient Chinese law. Its plan and many of its rules were adopted successively by the Sung, Yüan and Ming dynasties. The original of the code which was in force when the Chinese Republic was proclaimed in 1912 was enacted in 1646 by the Manchu dynasty a few years after its seizure of power. Known as the *Ta Ch'ing lü li*, that is, the fundamental laws and statutes of the great dynasty of Ch'ing, the code exists in numerous official editions, being promulgated with each change of sovereign. Each edition involves more or less important revisions. The text in force in the last years of the empire dated from 1890. All the rubrics of the code contain *lü*, the

fundamental and ancient laws, and *li*, supplementary statutes or laws representing crystallized jurisprudence. Translated into English by Sir George Staunton in 1810, the code has served in the West as the chief source of Chinese law. The technical value and social efficacy of the whole grandiose codification, covering almost the entire social organization of the empire, owes nothing to Judaeo-Greco-Roman foundations.

The penal system and the regime of the family and succession as they appear in the monumental Chinese imperial code may be examined with the greatest profit, for they best exhibit the spirit of Chinese law. Even as late as the nineteenth century the Chinese had not developed any true system of private law. A large sphere of regulation was left to the family. To the guilds was left the settlement of commercial disputes. Such rights as are called private in the West were normally secured by penal sanctions. The entirety of imperial Chinese legislation was made up of penal sanctions. Chinese jurists did not distinguish between penal and civil responsibility.

At the head of the dynastic codes came a series of tables and chapters devoted to the enumeration of penalties; to the release from penalties by payment of a fine; to rules of kinship, which were taken into consideration in cases of increase or decrease of penalties; to general theories of responsibility and such doctrines as incrimination, excuses, complicity, accessories, attempts. The celebrated "five punishments" of ancient China have frequently varied in nature. On the eve of the revision of the *Ta Ch'ing lü li* in 1910 they were: lesser beating, severe beating, temporary exile, permanent exile, death (by strangling, decapitation or dismemberment). The table of releases contained a series of charges for release for the various social classes: old men, children, sick persons, women in general, wives of officials, wealthy men, astronomers. In the table of mourning regulations were defined the complicated and detailed blood relationships of the Chinese family, which played such a large part in fixing penal responsibility. All relatives were listed in five classes of mourning, the most immediate relatives being those whose period of mourning was the longest. Special infractions were treated in book VI (*Hsing pu*), the most important of the entire code.

The fact that general theories figure at the head of the code is significant. The Chinese were brilliant criminologists and in the course of their long history elaborated the majority of the conceptions which today inspire the penal laws of civilized states. Departing from the cherished juristic principle that "punishment must be eliminated by punishment," they gave preference to an objective conception of responsibility and to the strengthening of the intimidating character of penalties. Behind the most involuntary deed, the slightest objective risk, they sought a responsible person. The notion of main force was in an embryonic state. When the natural order was disturbed, someone in the universe had necessarily committed a fault. Even children, idiots and animals might be punished. The vicarious responsibility not only of relatives but of officials has had a long history in China. In a very crude form the Chinese knew the modern objective conceptions of social danger and measures of security.

The Chinese system of family and succession has been the subject of considerable study. Historically there was a period when maternal kinship was predominant; after a period of transition agnatic kinship was finally established. Of the two early periods some traces remain in present day legal institutions. Despite the agnatic basis of kinship the order of generations is alternated—in the order *chao mu*. In the imperial codification the basis of the family organization remained the clan (*tsu*) composed of a certain number of families (*chia*). The clan included all the individuals of the same stock (*tsung*). In principle the community of name (*hsing*) had to correspond to the identity of *tsung*. An exogamic rule which disappeared only in 1910 prohibited marriage of persons of the same name, since they were considered as having the same paternal ancestor. The clan possessed as common property a certain number of goods, among which is the *ssü t'ang*, or temple of ancestors. These goods were administered by the clan chief, who likewise had the duty of holding the genealogical table (*tsung pu*). Within each family functioned the patriarchal regime. The lesser members of the family could neither share in the family goods nor have a separate establishment while their parents were alive.

Marriage was encumbered with severe and precise technical rules. Divorce was almost entirely confined to the husband. The traditional seven grounds of divorce were: unfilial conduct (toward husband's parents), adultery, jealousy, loquacity, theft, grievous disease and barrenness. Concubinage was legal but is not recognized by the modern civil code. An interesting matrimonial institution retained in the present code is

that of the son-in-law who summoned into the family of his father-in-law thus takes the name of his wife.

The law of succession was also the object of imperative texts in imperial legislation. Many of these texts had their origin in the most ancient rituals. The entire system rested on the fundamental distinction between succession to ancestor worship or to the paternal stock (*tsung*) and succession to the patrimony. The first was regarded as essential to the maintenance of the ancestral line of the family. In order to assure the continuity of the *tsung* it was necessary to establish as heir the son of the chief wife; if there were no children, the heir had to be decided upon according to the conditions fixed by the law. It is this institution of the heir which has so constantly been called by the dubious and equivocal term adoption. The heir had to be a male of the same *tsung* as the appointer; he had to be chosen according to legal order, that is, on the one hand the alternating order of generations (*chao mu*) and on the other the order called "from relative to relative" (*ch'in ch'in chih i*). Other rules determined special cases in the appointment of heirs, such as the fictitious appointment, which made it possible for an only son to inherit from two branches of the family. Succession to patrimony is in principle linked to succession to the cult. But if the heir to the cult has ipso facto the right to an amount of property sufficient to permit him to discharge his obligations, the surplus property may be given to others, even to third parties or to daughters, who can never succeed to the cult.

Even under the empire Chinese law was often adapted to changing conditions by customary modifications. In the latter years of the empire the reform party advocated the establishment of modern legislation modeled on European codes. The program of legal reform was based on a desire to prepare the ground for a change of regime and to persuade foreign powers to abandon exterritoriality. Westerners felt particularly the lack of a modern system of commercial law and, accustomed to highly subjective Christian doctrines of responsibility, were loath to submit to the Chinese criminal law.

A codification commission instituted at Peking in 1902 functioned under various titles for a quarter of a century with the assistance of Japanese and French councilors. During the period of the separation of the north and south of China a commission similiar to this one functioned in Canton. At present a complex process of codification brings into play both government and Kuomintang organs. Interior Mongolia and Tibet are under a special regime, but their law also is being recast by the Chinese government.

The first result of the movement for legal reform was the revision of the *Ta Ch'ing lü li* in 1910. Its main objective was the suppression of penal sanctions for civil responsibilities. The penal sanctions were replaced by sanctions of nullity, annulment and indemnity and the revised code was called *Ta Ch'ing hsien hsing hsing lü*. A provisional penal code was published in 1912. Since then many laws on special subjects as well as general codes have been enacted. Five books of a civil code were promulgated from 1929 to 1931, and codes of civil and criminal procedure and a criminal code in 1928. Commercial legislation and legislation relating to private international law have also been adopted. The collected legislative and regulatory texts are contained in three large official volumes, entitled *Tseng ting Kuo mir cheng fu ssü fa li kui* (3 vols., 2nd ed. 1931).

The new Chinese legislation, imbued with a strong social spirit, has sought to realize the "three principles of the people" (*san min chu i*) of Sun Yat-sen; these are the principles of nationalism, democracy and popular economic progress. The ancient regime of the family and succession which has governed China for centuries has been profoundly modified by the new civil code. While many of its old features have been retained, a new system of family organization more in harmony with western ideas has been substituted. The new legislation has in view, however, not only the family but the whole nation. While the ancient laws and rites protected the monarchical regime, the power of a single man, the new legislation protects the rights of the people, of the whole nation; while the ancient laws and rites considered economic relations only to the extent to which they were founded upon the family and agriculture, the new legislation tends to harmonize all interests and activities, including commercial and industrial; while the ancient laws and rites erected a juridical organization in which public and private law were confounded, the new legislation tends to separate them. Since the *san min chu i* contain the whole spirit of the new legislation and suffice to construct its technique, the need to borrow European or American laws and institutions has been denied by some Chinese, who look instead to a rebirth of "government by laws" affirmed twenty centuries ago by the non-Confucian schools.

Beside the new written legislation custom

continues to play an important role in the elaboration of Chinese law. Through it many of the traditional rules borrowed from imperial legislation remain potent. Moreover article 1 of the civil code declares expressly that the tribunals ought to apply custom in default of adequate legal provisions, and since 1912 the Supreme Court of Peking has set down a certain number of rules to guide the judge in this application. At the end of the empire an official investigation had been begun in all the provinces in order to determine the legal value and the significance of the principal customs. Two volumes of the report of this inquiry, which ended in 1925, were published in 1930 under the title *Min shang shih hsi kuan t'iao ch'a pao kao lu.*

Most writers on the present state of Chinese law fail to evaluate the important role of judicial decision. Modern codes and laws would not be viable without the aid of the interpretation given by the courts of justice. Since 1912 the Supreme Court of Peking has played a major role in the elaboration and preparation of the modern law. The publication of the *Receuil des sommaires de la jurisprudence de la cour suprême* by Jean Escarra and others (3 vols., Peking 1924–26) marks a date in the knowledge of Chinese law. But it is not only by decisions of a contentious nature that modern Chinese law is enhanced. There is another variety, called decisions of interpretation, *Chieh shih li*, whose technique goes back far into the legal past of China and which are of great importance today. According to texts in current usage the president of the Council of Justice, after receiving the advice of the president of the Supreme Court and of the president of the competent chambers of the court, has the "right to unify the interpretation of the legal and regulatory provisions and to modify the judgments." These decisions are eventually incorporated with the written law, just as the *li* were added to the *lü* of the imperial codifications. And as of old it is in these interpretative decisions rather than in the rules of the code that the profound vitality of Chinese law resides. There may be discerned the secret of the easy adaptation of the new legal principles to a society still quite impregnated with ancient legal traditions whose technique and inspiration are essentially different from those of the West.

JEAN ESCARRA

JAPANESE. The native law of Japan like the primitive laws of other nations retained elements of a magico-religious law. In archaic Japanese, law was called *nori* (declared word), for it was an oracle which was revealed through divine inspiration. The *nori* was announced by the official from the top of a hillock (*tsuka*), hence the word *tsukasa*, which means an official. All *nori* were unwritten declarations; the earliest written document which may be considered as law, the so-called Great Charter in Seventeen Articles of Prince Shōtoku, dates from 604 A.D. A chief function of the magical rulers was to make known to the people the will of the deities; hence they were called *hizhiri* (knower of the spirit), and the action of governing was termed *shiru*, *shirasu* and *shiroshimesu* (to know). The oldest Japanese records, *Kozhiki* and *Nihon-Shoki*, and the Chinese work *Wei chih* give the names of many feminine rulers in Japan. Offenses were designated as *tsumi*, being regarded as so unclean that they must be concealed (*tsutsumi*) from the deities. In ancient times *tsumi* were cleansed by the rite of purification (*harai*) in order to appease the anger of the gods; if there was doubt as to the presence of a *tsumi*, the question was decided by the ordeal of boiling water.

Since most of the Japanese deities were ancestral spirits, their adherents were limited to persons who were believed to be descended from them; and only those who guided their conduct by the will of the ancestral deities composed the kinship group considered to be their progeny. Such a group was known as *uji*, a clan; its members as *ujibito* or *ukara*, persons of the *uji*; its chief as *ujiko-no-kami*, head of the children of the *uji*, or patriarch; and the deity proper to it as its *ujigami*, deity of the *uji*. The *uji* was not only a social but an economic unit. The government of ancient Japan consisted in the magico-religious sway exercised by the most influential *uji*, and it was the *ujiko-no-kami* of the latter, ruling, as it was supposed, in accordance with divine will, who controlled the lesser *uji*. In the historical period the controlling *uji* was that of the mikado; its chief, more properly known as *sumera-mikoto*, was the sovereign of the primitive Japanese state, and the chiefs, such as the *omi*, *muraji*, *sukane* and *inagi* of the other *uji*, were its principal functionaries. The rank of the *uji* to which they belonged determined the social positions of the chiefs and of all other persons; no one, however able, could aspire to an office for which he was not properly eligible. The ideal in the social life of the ancient Japanese may be said to have been simply that each person should perform the duties of his office or remain

in his preordained status, observing the *nori* of his own chief and the *mikoto-nori* (edict) of the *sumera-mikato*, thus insuring the perpetual peace of the community. Unfortunately records do not sufficiently reveal the primitive state in which the purely native law of Japan prevailed. The society depicted by the oldest extant records had already begun to be influenced by Chinese culture and its indigenous magico-religious law was no longer free from secular elements.

From the end of the sixth century the great empires of the Sui and T'ang dynasties rose successively in China, menacing Japan by their repeated conquering expeditions eastward. In order to preserve its very existence the insular state was impelled to replace with the centralized legalistic organization of these empires its own historic regime of a loose federation of clans. The reforms of 645, which were known as the civil revolution of the Taikwa era, were in fact a movement to establish around the sovereign the centralized state which this crucial situation necessitated; the Ōmi codification which followed in 661 was an attempt to transplant Chinese law in order that the organs of the new state might function. This code was revised into the *ritsu* and *ryō* codes in 678 during the reign of Tenmu, was again revised in 701 as the *ritsu* and *ryō* codes of the Taiho era and was still further altered in 718 to constitute the codes of the Yōrō era. The *ritsu* (prohibition) consisted of penal rules; the *ryō* (command) contained rules of administrative, judicial, civil and commercial laws. Since they aimed at the realization of the ideals of Confucianism the codes included few provisions of private law. In 819 were compiled the *kyaku* and *shiki* of the Kōnin era, in 869 those of the Jōgwan era, in 905 the *kyaku* and in 925 the *shiki* of the Engi era. The new enactments may be called collections of edicts and by-laws, for the *kyaku* were pronouncements amending or abrogating parts of the *ritsu* and *ryō*, and the *shiki* were subsidiary regulations for the execution of the *ritsu*, *ryō* and *kyaku*. These completed the instrument of the political and moral control of the nation by the centralized government. Because the interpretation of the law was the subject of dispute among professional jurists, who wrote comments and treatises upon it, in 833 an official commentary was issued, called the *Ryō-no-Gige*. As the four bodies of law and the commentaries were all fashioned after the Chinese system, it seems difficult at first glance to discover therein the native law of Japan, but a comparison of the contents of the Chinese and the Japanese laws based upon them reveals clearly the existence of indigenous elements in the latter. Crude as the native law had been in contrast with the newly received legal principles, it had embodied the spirit of the Japanese people and could hardly have been eradicated by the mere acceptance of an alien law; even while the civil nobles at Kyoto were engrossed in Chinese culture, when the centralized government was at its strongest, the native law held a strong position among the gentry and peasants of the rest of the country. Since private law had been largely abandoned to the hazards of historic custom, that branch was least influenced by law copied from the Chinese.

After the rebellion of Masakado in 939 the influence of the centralized government declined; and when new classes of warriors (samurai) were formed from among the local gentry, the native law by which they had been living also gained a powerful position. This revivified native law, however, was no longer the same as the primitive but had cleverly incorporated elements of the accepted Chinese law. In the *Goseibai-Shikimoku* or *Jōyei-Shikimoku* of 1232, formulated by the shogunate of Kamakura, both laws are so intimately blended that it is difficult to reduce the individual rules to their origins. The *Goseibai-Shikimoku* was not only the fundamental code of both the Kamakura and Muromachi shogunates (1185–1573) but served also in the fifteenth century as a model for legislation in many territories of the local barons. This code, which was practical, flexible, extremely concise and of summary execution, may indeed be considered as singularly Japanese and feudal in character.

Although the new Japanese law represented by the *Goseibai-Shikimoku* was gradually enriched by the experience of the nation during the centuries which followed, its greatest development both in content and technique was achieved only after the seventeenth century. Following the battle of Sekigahara in 1600 the military power and the skilful government of the Tokugawa shogunate maintained peace for nearly 270 years; during this period native culture, commerce and industry attained a high degree of development. The new native law, which had been feudal, now assumed a markedly civil character; and even commercial and mercantile laws and the law concerning bills of exchange developed without any foreign legal influences. Among the legal monuments of this period the most famous is the *Kujikata-Osada-*

megaki, compiled in 1742, a code in one hundred articles, hence known also as *Osadamegaki-Hyakkajō*; but the chief legal sources are the innumerable accumulated judicial precedents.

The visit to Japan of Commodore Perry of the United States navy in 1853 was the first attempt on the part of foreign powers to force an entrance into Japan. In 1868 public opinion, supported to some extent by the influence of the powers, responded to the spirit of the new era and finally led to the destruction of the Tokugawa shogunate, which was based upon feudal institutions. In its place a new empire was established under the ancient sovereign but founded upon a capitalistic social order. The Japanese law of today, based upon the codified law of Germany, is replete with elements of European law hastily imported after the establishment of the new regime in 1868. There was at first a fairly strong desire to preserve the native Japanese law, but because of the necessity of revising the unequal treaties which had been imposed by the foreign powers, and which provided for exterritoriality, the new codes of law, which were completed about 1908 and which included constitutional law, penal law, commercial law and the laws of civil and criminal procedure, were cast in markedly European mold. For this reason, very few elements of the native law survive in the present Japanese law, and even these are for the most part not purely native but rather the results either of the transplantation of Chinese law which occurred a thousand years ago or of subsequent developments from Chinese origins. The chief remnants of the Japanese law of non-European origin are found in the constitutional law, the family law, the law of succession and the commercial law. The outstanding institutions which have survived are the *inkyo*, the *iriaiken*, the law of *mujin-gyo* and the *sekifu*.

The present law concerning the *inkyo*, or the retirement of the head of the house, provides that in order to permit the heir to succeed to his status the house head may resign his position for a specified reason recognized by law; the resignation is a unilateral act with bilateral effects. Four reasons for retirement are recognized by the present law: old age, above the sixtieth year; illness or other unavoidable circumstances; entry into another family through marriage; and desire to resign on the part of a female head of a house. Of these reasons the commonest is obviously old age. It was an ancient Chinese custom for the chief of a family to yield his place to his children or to resign his official post because of senility. That the article in the Japanese *ryō* of 718: "Officials may retire after seventy years of age," was of Chinese origin is evidenced by the statement in the *Chou li*: "[A man of] seventy years is called old [*lao*], and transmits [his place to another person]," and by that in the *T'ang liu tien*: "Officials in active service . . . shall resign after seventy years of age, but may be permitted to serve if their faculties are still unimpaired." This Chinese custom, combined with the Japanese institutions of the family and the clan, was the basis of the system whereby the chief of a clan or family yielded his position to his heirs. Furthermore when it was applied to the feudalism which subsequently achieved an independent growth in Japan, it gradually became customary for the leader of a great family of warriors who had lost his military prowess because of old age to transfer the exclusive right to the military command and the feudal possessions of the family to his heir, as a rule to the eldest son. The present system of *inkyo* is the transmission for specified reasons of the rights of the head of the house, which are the survival of the rights of the head of the feudal family, to the first legal presumptive heir, still as a rule the eldest child. The *inkyo* as defined in the present civil code (bk. IV, chs. ii, v; bk. v, chs. i–iv) may therefore be regarded if not as an original at least as a native institution of Japan.

The right of *iriai*, which literally means common entry, refers to the communal use of land. The present civil law distinguishes communal rights in land which have the character of joint ownership from those which have not; it applies to the former the provisions of the law of joint ownership, to the latter those of the law of servitudes and requires that in either case local custom be followed primarily. It is clear that the content of such rights may be traced to the local customs which have continued from the Tokugawa period (after 1600). While these customs vary, they have a common characteristic in that where they obtain the inhabitants of a community may together enjoy a sort of right in rem to gather fuel, fodder or grass from land held by the community itself, by another community or by an individual. This right resembles joint ownership; it does not, however, involve the notion of individual shares as do some joint ownerships, being similar rather to the collective ownership (*Gesamteigentum*) of the Germanic law. According to the *ryō* of 718, which imitated the Chinese law, "The benefits of mountains and rivers, bushes and marshes, are common to

the public and to private [individuals]"; that is, the usufruct of uncultivated woods and plains was abandoned to the *iriai* of the people. But it would be rash to attribute the origin of the right of *iriai* to Chinese law. The ancient Japanese village community was generally composed of persons of the same clan, who from very early times enjoyed the usufruct of nearby woods or plains owned in common by the clan; the rule cited in the *ryō* was nothing more than a translation of this native custom into Chinese phraseology, and the system of *iriai* is an example of the pure survival of the native Japanese law.

Mujin, which refers to cooperative insurance, is described in the present law specially enacted in 1915; according to this law a company formed for this purpose determines the number of shares and the sum of money to be paid out per share, the members paying periodical contributions and receiving by lot or by other methods the sum for each share. The custom is sometimes called *tanomoshi* (literally, hopeful), and through this term its origin can be traced back directly to the Kamakura period; a document of 1275 from the monastery of Kōyasan referring to *tanomoshi* is the first recorded evidence of it. *Mujin*, which was originally a form of credit association, was widely prevalent among the people organized around Buddhist institutions; and during the Tokugawa period it gave rise to a species of lottery known as *torinoki mujin*, which may be translated vulgarly as a "get-away" *mujin*, for only those members who were lucky enough to draw particular lots received the sum of the share and escaped the payment of the contributions otherwise due. Another development of the *mujin* during the Tokugawa period was a sort of life insurance called *mujō-kō* (literally, a society formed in view of the impermanence of life), in which the payment of a sum by the society was conditioned not by lot but by the death of a member. In China and Korea there exist similar customs, so that the origin of the *mujin* may possibly be foreign; but it is obvious that its present forms in Japan are the results of native development.

By the decree of *sekifu* (literally, committing to responsibility) the judge presiding at the preliminary examination or the court of public trial charges the relatives or friends of a suspected person to guard him and to present him to the court when summoned, thereby suspending the effect of the warrant of detention. The *sekifu* differs from liberation on bail (*hoshaku*) in that the former is an official order and is not like the latter granted on application of the accused or of his legal representative. The system originated during the Tokugawa period, when a suspect was often committed to the care and custody of the village or of the "five-house" group to which he belonged. The desire to prevent his escape not by means of a pecuniary fine but by an appeal to the sense of duty and humanity of the members of the family reflects the peculiar character of the Japanese family organization.

MASAJIRO TAKIKAWA

HINDU. Hindu law is older than any other existing legal system except perhaps the Jewish and today its *statut personnel* governs more than 230,000,000 people, an eighth of the human race; systems derived from it govern millions more. For three thousand years its outstanding characteristics have been the freedom of juristic discussion and the wealth and variety of custom. In the present article many branches of the law now obsolete but of interest to scholars must be left untouched. Fortunately the portions of Hindu law which are still vigorous are also the most characteristic.

The word *dharma(n)*, the nearest Sanskrit equivalent for law, or *jus*, is the passive noun from the intensive form of the root *dhṛ*, to support, cherish or maintain, and means literally "that which is strongly supported"; i.e. custom. This primary significance it never wholly loses; but by a metonymy of which there are already traces in the *Rigveda* the word came to be used in an active sense as "that which supports or maintains," the foundation; and a *Śruti* writer says that *dharma* upholds the entire world. In this sense everything, animate or inanimate, has its peculiar *dharma*. It is the *dharma*, the essential function, of a stone to be hard, of fire to burn, of a tiger to be fierce, just as it is the *dharma* of a king to punish and to protect, of a Brahman to study and pray. Even the Gods are conceived as having their special *dharma*. Thus the word like Aristotle's conception of nature affords room for the multiplicity of species, including the differentiation of humanity. But since human beings are endowed with will power, there is possible for them a choice between *dharma*, conduct which establishes ("living according to one's nature"), and *adharma*, conduct leading to a man's undoing. Again the sentence of Aristotle comes to mind: "What each thing is when at its best, that we call its nature." From the standpoint of the commonwealth *dharma* is solidarity, *adharma* is anarchy. *Stare super antiquas vias* is

the supreme purpose of human nature, and all progress seems impossible. But the law never stood still: scope for change has always been admitted even by the most conservative, partly by reference to educated opinion, partly by the conception of the successive ages of mankind. Safeguards are necessary in the *kali yug* which were superfluous in the golden age; a theory of human degeneracy cloaks real reform.

Unlike its Greek counterpart the Hindu concept fell upon priestly soil. Ritual, both religious and magical, sacrament, penance and austerity bulk large in the law books. Divine revelation is a postulate. Sometimes the word *dharma* is used to include both revelation and observed custom and sometimes only the former in opposition to the latter. But the contradiction is more apparent than real, for the mental attitude of the Hindu seer (*ṛshi*) was more akin to that of a modern man of science than to that of a Semitic prophet. He regarded revelation not as a wind which bloweth where it listeth but as the answer to prolonged ascetic study, and he sought to know not only what ought to be but first what is. It is no accident that the *Manusmṛti* opens with a cosmogony nor that writers catalogue, often without adverse comment, practises contrary to the tenor of their teaching; e.g. in the lists of the eight forms of marriage and of the twelve kinds of sons. But bad customs, although duly catalogued, are not *dharma*; the sources of *dharma* are the *śruti* and the *śmṛti*, the practise of good men (*sadacher*; elsewhere called *śistachar*, the practise of educated men) and that which is acceptable to one's own soul. The individual conscience and the public opinion of what may fairly be called the university group are sources of revelation.

Finally, *dharma* has a restricted sense in which it applies only to the religious custom of the twice born castes; that is to say, those superior castes (originating, as the texts show, with the fair skinned, fair haired and fair eyed Aryan invaders) who practise a sacrament of spiritual regeneration. The custom of merchants in commercial cases, the usages of a newly conquered territory, are to be scrupulously observed even though they are not *dharma* in this narrow sense, provided they are not repugnant to *dharma* in the sense of public morality.

Two consequences follow from this conception of law. (1) Law is personal and hereditary, not territorial. At the present day a Bengali who migrates to the Punjab or a Madrasi who settles in Bengal takes his personal law with him, and families continue to observe amid another system the law derived from ancestors who migrated hundreds of years before. Moreover caste custom or local custom may always override the general body of the law. (2) The tribunals by which law is normally enforced are private tribunals, those of the family, trade or profession, caste or community whose particular *dharma* is involved; the state courts are courts of last resort. This peculiarity disappeared on the establishment of British courts. Of such private tribunals only caste panchayats remain, and they function only in the internal affairs of the caste; but through the long period of Moslem domination these private courts facilitated the continuity of Hindu law at the same time that they fostered the immense growth of custom. The revival of panchayats has been a favorite idea of reformers in recent years.

Apart from caste (*q.v.*) the most characteristic of Hindu legal institutions is the joint family. Traces of this can be found in most branches of the Aryan race, but it received its fullest development in India. It has always been strongly patriarchal and agnatic, the matrilineal system of the Malabar Nairs being a purely local and insignificant exception. Of the joint family there are in law two widely different conceptions (*see* JIMŪTAVĀHANA; VIJÑANESVĀRA); but so long as mutual trust continues, the economic and social working of both systems is the same. Reverence for the father is as great elsewhere as in Bengal; nor does the Bengali father fail to consult his adult sons. A joint family consists of a father and his sons, or of the male agnate descendants by birth or adoption of a common male ancestor, with the wives and unmarried daughters dependent upon them. In the case of a trading family it may happen that one brother is managing a branch in Rangoon, another in Delhi and a third in Nairobi, while the original home may be somewhere in the Rajputana deserts. But however widely separated, they have a common home where the family worship (in those castes which practise family worship) is maintained, and when together the men of the family have a common table. All revenues are carried to and all expenses paid out of a common fund. Until the moment of partition there can be no question of a member earning less or spending more than his share: partition is the safety valve and from the earliest law books onward the prescriptions about it are numerous and detailed.

The question whether individual or group ownership is the older is an unprofitable one, for

in early times the two conceptions are inextricable; every joint family springs from the personality of an individual founder. But the Hindu law books connect the idea of joint property preeminently with land; one may compare the agricultural connotation of the Roman familia: the pastoral patriarch was an individualist.

Sacramental marriage, akin to the Roman *confarreatio* and probably monogamous in origin, dates from Vedic times. The wife, *patni*, stands beside her husband, *pati*, at the family sacrifices, which he cannot celebrate without her assistance; and in the Vedic marriage ritual he promises to respect her economic liberty. This sacramental idea nevertheless involves the merger of the wife's personality in the husband. Widow remarriage is impossible: but the self-immolation of the *sati* (suttee) although ancient was never general, and compulsory *sati* was based on a misreading of the texts.

But a baser conception of the legal position of women is also very ancient. The primary religious duty of every Hindu to have a son becomes obscured in early times by the economic advantage of every man to have as many sons as possible, and women are merely a means to that end. Woman must be married in childhood so that her fruitfulness may be exploited to the utmost. A famous text of Manu assimilates sons and wives to slaves, and another declares the perpetual dependence of woman. Marriage by purchase, capture and fraud; concubinage, the levirate, directions to a wife to raise up seed by another man, these things are duly catalogued in the *smṛtis*. It is to the credit of their writers that they managed on the whole to discountenance the worst abuses. Today of these lower forms marriage by purchase alone survives and although common in some classes is reprobated at least for the twice born castes. Divorce is impossible save by rare caste custom among Sudras: many Sudra castes have always permitted widow remarriage. Polygamy is universally legal, but monogamy is more common and there is some authority for saying that a second wife is justifiable only where the first wife remains sonless; even then a gift on supersession is recommended. The property rights of women—in contrast with the Vedic text—are almost confined to personal and household goods and to the limited estate of a widow as the surviving half of her husband's body. In the joint family (save rarely in Bengal) women are only dependents. Reformers, however, may draw an armory of texts from ancient sources.

Brahman family life is built up around a duty of oblation to the manes of departed ancestors. The head of the family in each generation, accompanied by his wife, must offer cakes of wheat, rice or millet (according to the locality) to three generations of his agnate ancestors and three generations of the agnate ancestors of his mother and smaller offerings to more remote forbears. Continuity is a religious duty and if a man cannot get a child by normal means he should adopt one, for a son, *putra* (according to a false etymology in Manu), saves his father's soul from hell (*put*). Legal doctrines based on this religious theory have been applied to fetter the liberty of castes who never held the theory; and the curious and nowadays common practise of adoption by a widow to her dead husband is based upon it.

History is an exotic science on Hindu soil, and there is not a date until recent times nor even a personality in the legal history of India which is not disputed among scholars. Four periods, however, are distinguished. The first is the period of the *śruti*, literally of "things heard"; i.e. of the *Vedas* and other writings, regarded as the voice of God. Although not juristic these contain scattered legal matter from which the social life and polity of the primitive Aryans can be to some extent reconstructed. Folk custom is seen hardening into a series of sacerdotal prescriptions. The second period is that of the *smṛti*, literally of "things remembered." This word (implying divine revelation in substance without textual inspiration) is used in two senses: in the wider it includes all ancient Sanskrit writings other than those enumerated above; in the narrower it is used of the ancient works on *dharma* only, of which there are probably about a hundred still extant. The more important, about twenty in number, have been wholly or partly translated. The earliest are probably contemporary with the latest Upanishads; they are the work of a period when the Hindu mind had already attained the highest refinement in metaphysical speculation. There is nothing in extant Hindu law corresponding to such codes as the *Lex salica* or even the Twelve Tables.

There are three classes of legal treatises of this period. (1) The *Dharmasutras* are the oldest manifestation of definite schools of law, or rather they embody (in the form of mnemonic aphorisms) the law teaching given in particular Vedic schools. With one exception, which professes to emanate from a god, each of them bears the name of some great sage of the preceding period, implying thereby that it was the accepted

doctrine of the school which carried on his teaching. They embody in the main the law of a period anterior to the triumph of Buddhism although only partly anterior to the Buddha, the probable dates being from about 600 B.C. for the earliest down to about 300 B.C. Of rules which are still a vital part of the law the widow's rights of inheritance are based on a text of Baudhāyana and important rules on adoption are taken from Vasiṣṭha. (2) The next stage of legal evolution provides the *Arthasāstras*, or books of secular administration as distinct from religious law. Of these the most important is the *Arthaṣāstra* of Kauṭilya, which professes to be the work of the prime minister of Chandragupta, the first Maurya emperor, and, if this profession is correct, must date from his reign, 321–296 B.C. Like nearly everything else in Sanskrit chronology the date and ascription are vigorously disputed, but unquestionably the work embodies the policy of a ruling class in a highly organized state. Such a class, once it has achieved the objects which brought it to power, is always conservative. The *arthaṣāstra* accordingly insists on the duty of the king to uphold the *dharma* of the various castes, although it ranks royal command as superior to *dharma*, a view from which of course the religious writers emphatically dissent. The value of the *arthaṣāstra* today is purely historical. (3) The term *ṣāstra*, connected with a root meaning to teach, is correctly translated as institutes and incorrectly but frequently as codes of law. *Dharmaṣāstra* in its broadest sense covers all Sanskrit writings on religious law, including both the *dharmasutras* and the later digests and commentaries. Strictly, it is synonymous with *smṛti* in its purely legal connotation; more narrowly still, it connotes only those later *smṛti* works on *dharma* which are couched in verse. These probably date from the overthrow of Buddhism and reestablishment of Brahman supremacy, with which the two most important of them, the institutes of Manu and Yājñavalkya, are connected. These two are accepted as of universal authority in Hinduism.

The name Manu for the primeval lawgiver and father of mankind has a history going back to the *Rigveda*. Such a personage is of course entirely mythical, but from very early times there seems to have been a body of law recognized as of greatest authority and quoted with submission by *ṣruti* and *sutra* writers as that of Manu. What that body of law was—whether floating tradition or the teachings of a single school or various earlier editions of the existing work—and what was its relation to the existing work are questions of great obscurity. Scholars incline to place the date of the *Manusmṛti* as it exists today in the first century A.D., although it may be perhaps two hundred years earlier. Its orthodoxy connects it with the Brahman counter-reformation, and it has been plausibly suggested that one passage is inspired by the usurpation of Puṣyamitra Sunga in 184 B.C. Even as it stands, however, the *Manusmṛti* contains matter obviously of widely different periods and prescriptions which it is quite impossible to reconcile with one another.

A great colonizing movement beginning before the Christian era and originating mainly from central and southern India carried Indian civilization overseas to Burma, Siam, Cambodia, Annam, Sumatra, Java and the Malay Archipelago. In all these countries a distinctively Brahmanical civilization was established; Buddhism was a later arrival. It seems a reasonable although by no means a certain inference that the foundations were laid before Buddhism became a dominant force in India or else by exiles who disliked and fled from it as the Pilgrim Fathers fled from the Church of England. The existing *Manusmṛti* disapproves of oversea voyages; one who takes part in them is not allowed to be present at family sacrifices; i.e. is outcasted. But throughout the farther East Manu is the name of the founder of law. Manu law books are known to have existed as far afield as Java and Bali. Sanskrit inscriptions in Cambodia are either literal quotations from or based upon Manu, and there is still a Brahman priesthood. In Burma in particular there has been a series of *Manu dhammathats* lasting over centuries, the earliest of which is identical in form and to some extent also in substance with the *Manusmṛti*; in later times the name Manu became a title which was given to juristic writers of exceptional eminence.

Part of the Hindu civilization of the farther East was overrun by Buddhism and part by Islam. In any case the law, so far as it survived, had a separate growth and history and has diverged widely from Hindu law. So-called Burmese Buddhist law at the present day reveals its ancestry not only by the Manu tradition but by its vocabulary, which is borrowed from the Sanskrit; but although a few isolated rules are retained, the definitions of identical terms and the juristic conceptions have been altered. In particular birthrights are unknown and the joint family of Hindu law, on which the wife was a

dependent, has given place to a *societas* between husband and wife. The *Yājñavalkyasmṛti* comes probably three to four hundred years later in date than the *Manusmṛti* and has not been carried to the farther East, a fact which helps to date the severance of oversea Hinduism from the main stock. Nevertheless, isolated rules from *Yājñavalkya* and even from later *smṛtis* are traceable in far eastern systems, notably in Java. Although second in popular reverence to the *Manusmṛti* on which it is based, it is more important; both because it represents a liberal recension of Manu and because it is the basis of most of the work of the succeeding period, especially of the *Mitākshara*. The *smṛti* of Nārada is the last work of this period.

The third period of Hindu legal history is that of the commentators and digest writers (*c.* 800–1800 A.D.). The first half of this period was the Antonine age of Hindu law. No longer claiming divine authority for themselves writers in countries as yet unshaken by the Moslem invasion undertook the task of evolving a *corpus juris*. Professing absolute submission they could not reconcile the mutual contradictions of the *smṛti* writers; under the guise of exegesis they allowed themselves considerable freedom of legislative amendment. Professing to explain they not only explain away but also rebuild. The two greatest are Vijñanesvāra, author of the *Mitākshara*, and Jīmūtavāhana, author of the *Dāyabhāga*; and India is to this day divided in allegiance between them. Devaṇṇa Bhaṭṭa, a Telugu Brahman, author of the *Smṛti Chandrika*, also deserves mention.

During the latter part of this period Islam was dominant over the greater part of India. Although a somewhat fanciful parallel between *fiqh* and *dharma* is possible (for both are ethico-legal conceptions), yet with the domestic character of Hindu tribunals and the Gallio attitude of Islam to the laws of subject races contact between the two systems was purely external and hardened their natural conservatism. A few great names arise in this later period, notably Nilkantha Bhaṭṭa, whose *Vyavahāra Mayūkha* is the prevailing authority in Gujarat. There was a flourishing fifteenth century school of law in Mithila (Bihar) and there were eminent writers in Bengal, Benares and elsewhere. The worst tendencies of the period to pedantry and divorce from practical life are exemplified in Nanda Paṇḍita of Benares, whose work on adoption (*Dattaka Mimamsa*) has unfortunately become the leading authority.

The association of Jagannath Tarkapanchanan and Colebrooke in compiling and translating the last of the great Sanskrit digests in 1797 fittingly marks the transition to the next period of Hindu legal history, in which Hindu law came under the influence of English law. This influence is comparable to that exercised by Greek philosophy over Roman law or by Roman law over English law and had its origin not only in the preconceptions with which English lawyers approached Indian problems but also in the admiration which was felt by Hindus for the English system as well as for the liberty which it fostered.

Of English preconceptions the most important was perhaps that of law as a single system. This limited the scope of Hindu law to matters affecting Hindus only, in practise the *statut personnel* and a few other rules. It also reduced the caste tribunals (panchayats) to a position resembling that of club committees or trade unions in England. Coming from a country in which all legal authority had for centuries been exercised by a small centralized body of judges and barristers, early English judges in India not unnaturally supposed that the leading *smṛtis* and commentaries, universally quoted with reverence, enjoyed an authority comparable to the English statute book and law reports. Even the famous dictum of the Privy Council in 1868 that "under the Hindu system clear proof of usage outweighs the written text of the law" enshrines the very mistake which it corrects. There is no "written text of the law"; there are only authoritative treatises on an unwritten law. The same tendency to unification, healthy in the main, was fostered by the fact that at first only a small portion of the Sanskrit legal literature was translated; the courts inevitably exaggerated the authority of that which was available to them. In particular the *Dattaka Mimansa* above mentioned and another late treatise (in its present form probably a forgery) have become the basis of a highly artificial and unsatisfactory law of adoption to the exclusion of more valuable material. Again, this unifying instinct has strengthened the Brahman tendency to apply religious theories peculiar to the twice born castes to legal problems of Sudras, outcastes, aborigines. The incongruity, however, is more apparent than real; for such classes as they rise in the social scale copy the best that is known to them and the theories in question only give artificial form to practises (e.g. agnate succession, adoption, patriarchal power, family solidarity) common

even in communities where such theories are unknown. But in some parts, notably in the Punjab and Malabar, custom has been too stubborn for any unification. The English doctrine of judicial precedent has found a congenial soil in Hindu law. In general this also has led to unity and certainty. But differences of opinion between various high courts as to the importation of English rules have produced cleavages which did not previously exist. The most famous is on the question whether one member of a *Mitākshara* joint family can alienate his share for value without the others' consent. In those high courts where such alienation is recognized it is so only where it can be brought within the equity by which an English purchaser for value may claim to stand in his vender's shoes and take over his remedies. This exemplifies the fact that English equity doctrines have been acclimatized far more frequently than the doctrines of the common law. In some cases parallels have been discovered in the Sanskrit texts; in others "those principles of law common to all systems," or "justice, equity and good conscience," have been invoked. But so numerous are the rules transplanted that it is impossible today to understand Hindu law without a knowledge of English equity jurisprudence. The most striking importation of English ideas to satisfy purely Hindu wishes is the will making power. Before the British advent in India wills were unknown to Hindu law. There is now a large and complicated Hindu law on the subject built up mainly of English materials. English judges have attempted to check its growth by reference to the ancient Hindu law of gifts, but the only result has been to exemplify another importation from England, to which Hindus increasingly turn; namely, the use of legislation as an engine of law reform. The modern Hindu lawyer, regarding his ancient law with patriotic pride, looks upon English law also with possessory affection. He would not separate even if he could the two systems of which he is the living synthesis, and in adapting his inherited conceptions to the needs of today he is merely doing openly and with modern tools what in another age and in another fashion was done by the sages and commentators before him, above all by Vijñanesvāra.

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See: CRIMINAL LAW; CRIME; CRIMINOLOGY; PUNISHMENT; LEGISLATION; CODIFICATION; PUBLIC LAW; ADMINISTRATIVE LAW; CONSTITUTIONAL LAW; FAMILY LAW; COMMERCIAL LAW; MARITIME LAW; CONFLICT OF LAWS; INTERNATIONAL LAW; JURISPRUDENCE; JUSTICE, ADMINISTRATION OF; COURTS; JUDICIARY; LEGAL PROFESSION AND LEGAL EDUCATION; PROCEDURE, LEGAL; PROPERTY; OWNERSHIP; POSSESSION; SUCCESSION, LAWS OF; MARRIAGE; DIVORCE.

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LAW ENFORCEMENT, while it may refer to the process by which public order is maintained, refers more significantly to a public attitude or ideal of government. It is the purpose here to deal not with the myriad processes of enforcing laws (*see* JUSTICE, ADMINISTRATION OF) but with the idealized concept of law enforcement which occupies such a prominent place in the recent legal and political literature. In a sense the notion of law enforcement is inseparable from law, because no law is passed without some expectation of enforced obedience. Yet by imperceptible gradation the emphasis is often changed from the social purpose or the merits of the rule itself to the notion that the prestige of government depends on its enforcement; and enforcement becomes directed not to serving public safety or convenience but to justifying a moral attitude toward law regardless of public convenience. Arising at first from a real necessity for enforcement, the ideal of law enforcement tends to grow mystical and abstract and has progressively less to do with actual enforcement.

The laws to which the creed of law enforcement attaches itself are not necessarily those of the greatest social significance. It is notably absent in so-called civil cases, including such important fields as negligence, breach of contract, public utilities, rate making and corporate mergers. Attorneys who contrive devices for avoiding the consequences of these laws maintain positions of impregnable respectability. Yet the prestige of the state might logically be more involved in the enforcement of such laws than in

the incarceration of an occasional bootlegger. The creed attaches also as a rule to laws which not only are not enforced but which are in the social situation difficult of enforcement. Thus the enforcement of rules requiring chastity of priests in the Middle Ages, forbidding card playing in the Methodist church and prohibiting the sale of intoxicating liquor in the United States is clothed with an emotional importance which increases as the laws are ignored. In the process of emotional construction laws and penalties are heaped on one another, appeals are made to civic consciousness, oratory is added to reason, with an intensity of feeling that allows more significant social problems to be obscured.

The problem of criminal administration presents two aspects—the keeping of order in the community and the dramatization of the moral notions of the community. The first is primarily a problem for the police and the system of prosecution and is little overlaid with moral and emotional considerations. In fact the quality of the economic system and its impact on individuals are probably more important in preserving order than any system of criminal law. The honest prosecutor, except for the occasional fanatic, is necessarily more concerned with the suppression of dangerous individuals than with law enforcement as an end in itself. To him the criminal code is a very practical assortment of weapons, and the fact that there exist more laws than he can ever enforce does not greatly trouble him. Unimportant offenders are speedily disposed of by the offer of inducements to plead guilty. The important criminal against whom insufficient evidence exists may be sentenced for the suspected offense under some other law; or he may be induced to plead guilty on a compromise basis because he is ignorant of the strength of the case against him. The first object of the prosecutor is to put him behind bars. The ideal of law enforcement, with its distrust of "bargains," its demand for uniform sentences and its emphasis on laws rather than individuals, is pushed into the background when the practical concern is one of public safety.

The second aspect of criminal law administration is its role in dramatizing the moral notions of the community. It is here that the courts find their chief function and the ideal of law enforcement is most operative. The trial of "Al" Capone, against whom no sufficient evidence of racketeering had been found and who was sentenced under a tax measure, was hailed throughout the United States as a triumph of law enforcement. Everyone felt better because of the emotional significance of the vindication of "law." In the same way, when the conviction of an admitted whisky ring, against which ample evidence existed, was reversed by the United States Supreme Court on the ground of unreasonable search, the ideal of individual freedom from governmental tyranny was dramatized.

The ideal of law enforcement as it has become a part of the contemporary political consciousness may be stated somewhat as follows: laws (particularly criminal laws) are sacred; whatever their social consequences or by whatever political methods they have been passed, they must be respected and enforced until repealed; they must be respected that they may be enforced and enforced that they may be respected; non-enforcement of any law leads to a disrespect for all laws, which in turn leads to non-enforcement of all laws. This reasoning is constantly molding attitudes toward criminal administration and its reform. In the struggle over prohibition in the United States it has compelled even the opponents of the law to demand enforcement. A politician who would publicly advocate disregarding or relaxing any law would by common consent be endangering the structure of government.

One of the results of the attitude is the prevalent opinion that there are too many laws. There were 14,872 sections in the Missouri Revised Statutes of 1931; 17,875 in Michigan in 1929, 15,367 in Ohio and nine volumes in the New York Consolidated Laws. Obviously not all these sections can be enforced, but the improbability of enforcement seems to inspire a vague terror. Codes are often revised, but the revisions usually find some use for everything, and the intellectual method is not that of expurgation but of reconciliation—always a wordy process; as a result criminal codes appear to be increasing in size rather than diminishing. Actually they tend to be palimpsests consisting of one law written over another, with nothing ever repealed, since they represent moral attitudes which have a way of persisting long after they are in direct conflict with behavior.

A second important effect of the unexamined assumptions back of the concept of law enforcement is found in the contradictions in which it involves the rhetoric and the actualities of the judicial system. Thus the courts enforce the criminal law, and therefore the verbal content of criminal law and procedure is deemed of the utmost importance to public order; actually the

courts have only a minor part in the maintenance of public order, judged from the small percentage of cases which reach them. Again, criminal law is looked upon as a body of generally known rules which guide the ordinary citizen in his conduct; actually substantive criminal law may be most significantly seen as an arsenal of weapons to be used against such persons as the prosecuting officer may deem a menace to public safety. Again, it is considered the duty of the prosecutor to enforce all criminal laws regardless of his own judgment about public policy, since compromises may lead to disrespect for law; actually it is the larger duty of the prosecutor to solve the problem of public order, using the criminal code as an instrument rather than a set of commands; this makes it proper and necessary that he should enforce some laws, partially enforce others and ignore still others according to his best judgment. Finally, the bargaining process by which lighter sentences are traded for pleas of guilty is regarded as contrary to the ideals of criminal justice; actually criminal cases should be frankly compromised at the discretion of the prosecutor, since it is possible to try only a small proportion of criminal offenders and the method of compromise assists in the speedy disposition of minor cases and the punishment of important criminals against whom formal evidence is lacking. To these typical contradictions may be added others: the conflict between the law enforcement ideal of uniformity of sentences and the social desirability of individualized treatment of criminals; and the general conflict between standards of speed and number of convictions as tests of efficiency in prosecution, and the fact that a wise discretion might invoke a very large number of dismissals.

This conflict between the ideal of law enforcement and the demands of realistic criminal administration compels the necessary compromises of criminal cases to be carried on sub rosa, while openly they are condemned. Criminal reform is thus futilely directed at the elimination of "bargain days" in court (when large numbers of unimportant small offenders are given approximately what they deserve) on the theory that if such cases were more relentlessly tried some good would come of it. The prosecutor is also placed under the necessity of appearing to enforce all laws at once. Often he may be compelled by outside agencies actually to attempt to enforce laws which promote dissension and disorder rather than public security. The philosophy of law enforcement permits him to make no selection of laws, while the necessities of the situation compel him to use a discretion only sporadically controlled by the zeal of outsiders. And when the ideal of law enforcement conflicts with older ideals no less tenaciously held, particularly that of individual freedom from governmental encroachment, the moral choice grows highly complicated.

The causes for the pervasive influence of the law enforcement ideal in the United States must be sought in the constitutional traditions of the country and in its social development. Back of it lies the English constitutional struggle in which the Parliament strove to subordinate the king to law and thereby invested law for the English speaking world with a sanctity which it has never entirely lost. Despite the lawless basis of the American Revolution and even of the constitution the idea regained its force once the new policy was established. Andrew Jackson in handling the threat of secession by South Carolina chose wisely not to talk about the highly debatable question of secession but to take his stand on the unquestioned assumption that "nullification" was an evil. The phrase had magic in it and was deeply burned into American consciousness by the Civil War. It furnished an apt ideological basis for the enforcement of the prohibition law, pointing the moral that unless all laws are enforced the governmental structure will totter. Finally, support for the doctrine was drawn from the fear of the invasion of immigrant groups with their lawless traditions and institutions, felt by the "native" element in the population.

Perhaps a different ideology concerning the criminal problems may be seeping into public consciousness with the notion that the problem of crime is that of the maladjusted individual rather than that of the unenforced law. Yet this notion has still a long struggle before it with the conflicting ideal that we must enforce laws in order that laws may be enforced or else face anarchy.

THURMAN ARNOLD

See: LAWLESSNESS; CONSTITUTIONALISM; JUSTICE, ADMINISTRATION OF; PROCEDURE, LEGAL; PROSECUTION; POLICE; PROHIBITION; SUMPTUARY LEGISLATION; BLUE LAWS.

Consult: United States, National Commission on Law Observance and Enforcement, *Reports* (1931); Arnold, T. W., "Progress Report on Study of the Federal Courts—No. 7" in American Bar Association, *Journal*, vol. xvii (1931) 799–802; Illinois Association for Criminal Justice, *The Illinois Crime Survey* (Chicago 1929); Pennsylvania, Commission Appointed to Study

the Laws, Procedure, etc., relating to Crime and Criminals, *Report* (Philadelphia 1929); Cleveland Foundation, *Criminal Justice in Cleveland* (Cleveland 1922); Missouri Association for Criminal Justice, Survey Committee, *The Missouri Crime Survey* (New York 1926); Pound, Roscoe, *Criminal Justice in America* (New York 1930); Hopkins, E. J., *Our Lawless Police* (New York 1931); Zelitch, Judah, *Soviet Administration of Criminal Law*, University of Pennsylvania Law School series, vol. v (Philadelphia 1931); Elliott, Mabel A., *Conflicting Penal Theory in Statutory Criminal Legislation since* 1900 (Chicago 1930).

LAW, JOHN (1671–1729), Scotch monetary theorist and financier. Law was born in Edinburgh. His life was extraordinary and his work marks a turning point in the evolution of monetary doctrines. The son of a goldsmith and active in all the controversies arising in England at the time of the creation of the Bank of England in 1694, he elaborated many projects which he strove to have executed in various countries—England, Scotland, Austria, the Italian states, France.

His doctrine was inspired in part by the work of various English publicists, such as Locke, Petty, Mun, Davenant, Barbon and North, and in part by the general economic condition of western Europe, especially France, at the end of the seventeenth century and the beginning of the eighteenth. A mercantilist, Law sought before all else the development of the wealth and power of the state. Land, natural and industrial products and the inhabitants constitute the essential wealth of a country but these elements "depend on commerce and commerce depends on specie," which consists of the precious metals. As the latter are relatively rare he conceived the scheme of substituting for metallic currency paper money, which can be created at will and more easily transported, the cost of which is insignificant and the circulation much freer. The paper currency would be secured, for example, by the value of a nation's land and circulated by means of a public bank which would accept it and convert it eventually into specie. As the value of money does not result from its intrinsic nature but from the uses to which it is put, the public would gradually become accustomed to this new money and would desire no other; the bank would then be able to extend its activities—for example, to redeem the public debt by engaging in profitable commercial operations in the colonies and the like.

In 1716 Law finally succeeded in winning the French government to his project and there consequently took place the creation of the Banque Générale and of the Compagnie d'Occident in 1717 (enlarged in 1719 into the Compagnie des Indes), the fusion of the two institutions, the accession of Law to the general control of finances and the issue of nearly three billion notes to accomplish the redemption of the public debt in 1719–20. After four years of brilliant success the system encountered a lack of confidence, engendered by the overexpansion of the company's activities, the increase in the issue of paper and the excessive haste with which Law wished to remold the political, economic and social structure of France. In less than a year the system broke down, resulting in the ruin of numerous individual speculators but having nevertheless reduced the burden of the debt service and leaving behind it a shipping company of 105 vessels and grandiose colonial prospects.

Although he was obliged to flee in 1720 Law did not lose courage; he multiplied his writings in defense of his conceptions and was about to be recalled to the financial administration of France when the regent, his protector, died in 1723. He then retired to Venice, where he died in straitened circumstances.

PAUL HARSIN

Consult: Wiston-Glynn, A. W., *John Law of Lauriston* (Edinburgh 1907); Cayla, P., *Les théories de Law* (Paris 1909); Harsin, P., *Doctrines monétaires et financières en France du XVI^e au XVIII^e siècle* (Paris 1928) p. 115–210, and *Étude critique sur la bibliographie des oeuvres de John Law* (Liége 1928); Mann, K. F., "Die Vorgeschichte des Finanzsystems von John Law" in *Schmollers Jahrbuch*, vol. xxxvii (1913) 1165–1229, and "Der politische Ideengehalt von John Laws Finanzsystem" in *Jahrbucher für Nationalökonomie und Statistik*, 3rd ser., vol. lviii (1919) 97–122; Rohrbach, R., *Die geld- und kredittheoretischen Anschauungen John Laws*, Volkswirtschaftliche Studien, no. 18 (Berlin 1927); Strub, O., *Laws Handels- und Kolonialpolitik*, Züricher volkswirtschaftliche Studien, no. 7 (Zurich 1913); Di Gennaro, M., *Giovanni Law e l'opera sua* (Naples 1931).

LAW MERCHANT is a branch of the law once applicable to the affairs of a particular class of individuals, merchants, and subsequently extended in England and in America to commercial transactions generally. The body of legal rules which is called the law merchant is historically the most ancient in the modern law, so that knowledge of its history in mediaeval and to some extent in ancient times is essential to the comprehension of modern commercial law. In ancient Egypt contracts of sale and loans followed customary and general business forms; likewise in Babylon there were established legal

forms for documents, which were carefully preserved. In ancient Greece the commercial law was—as also later, in the Middle Ages—unwritten and customary; foreign merchants were under no legal disability; contracts were informal; banking and exchange appeared; commercial paper payable to bearer and to order was not unknown; customary rates of interest were established; and there was a limited amount of agency. At Alexandria many of what were once considered to be features of the mediaeval law were in existence; the right to pursue an occupation was confined to the members of a guild which had its own statutes, its own court and a special commercial code; its members abroad were grouped into specially privileged bodies, lived under their home laws and were governed by their own directors.

To this considerable and developed body of the law Rome fell heir, but with one notable difference. Of all the fully developed legal systems of the world only the Roman and the English possessed no separately organized mercantile tribunals, no distinct codes of commercial law, but developed and administered the commercial law as a branch of the general law.

But the more ancient mercantile rules were perfected by the Roman experience, and the results were summed up and codified by Justinian. This legacy was inherited by the later Roman, or Byzantine, Empire, to a lesser extent by the barbarian kingdoms and ultimately by the mediaeval cities. Even in western Europe, as the *Lex visigothorum* shows, foreign merchants were for long governed by their own laws and their causes were tried before their own judges; the merchants of Merovingian France were in commercial relationship with most of the other Mediterranean countries. In 796 Charlemagne wrote to Offa, king of Mercia, requesting protection for his own merchants and promising it reciprocally to Mercian merchants "according to the ancient custom of commerce."

At the eastern end of the Mediterranean the later Roman Empire was for many centuries enterprising, wealthy and powerful; and the existing body of Roman law continued in force without demonstrable evidence of any break. But in addition to this law a new influence, the power of custom, was in the making. As early as 540 the eastern prefect by order of Justinian assembled the captains concerned in maritime loans in order to ascertain what the current customs then were. After this time the influence of legislation, never great, practically disappeared and the influence of custom came to the fore and was thenceforth the means by which the commercial law developed. Even in Justinian's time the commercial interests began to obtain the restoration of a special status. The tradespeople or a certain class of them, especially the bankers at Constantinople, were exempted from the provisions of the new imperial laws; and an extended special jurisdiction of the officially appointed directors of the commercial corporations existed. In this way there came to be a special law for those engaged in mercantile and industrial occupations. Behind Justinian's code there undoubtedly existed not only this special law but also provincial and local customary laws, which together with actual commercial usages must have been ultimately handed down to the Middle Ages. Even the codes underwent some modification by custom. The Rhodian Sea Law, probably an eighth century compilation from earlier materials, shows new maritime usages arising out of new needs pertaining to losses at sea and insurance. Little by little a commercial maritime law was formed, governed by its own rules; because of these customary modifications it was distinct from the classical civil law.

The close connection between Italy and the later Roman Empire has not been sufficiently appreciated by legal historians. From the reestablishment of Roman authority in Italy in the reign of Justinian the relations both political and commercial of Italy with the empire continued with but slight interruptions until the ultimate fall of the empire in 1453. By this close and nearly constant connection the continuity of the law was undoubtedly preserved, because the classical law, as modified by the customs of the later empire, must have been in force in the dependent Italian seaports until about the time of the final withdrawal of the imperial authority in 1071, which left the maritime cities of Italy legally free to develop their own commercial and maritime laws in their own way—the way of customary growth. It was in mediaeval Italy that commerce became important and there as elsewhere the maritime and commercial laws went hand in hand. In the south of Italy, where the imperial influence persisted longest, the earliest codes of maritime law were compiled. It is not to be wondered at therefore that codes of maritime law and commercial courts sprang up in Italy in the eleventh and twelfth centuries—as historical time goes, almost immediately after the officials of the empire had left the peninsula forever.

The corporations of arts and trades in the Italian cities had apparently survived painfully and obscurely to the period of the crises of the Dark Ages. In the tenth and eleventh centuries they united, controlled the governmental systems themselves and formed the independent city republic, the commune, governed by consuls. The *consules communi* first appeared at Pisa in 1087; they were apparently high corporation officials invested with many sorts of public duties and powers. This connection of the private corporation with the public official was never wholly lost. With the increase of commerce the *consules communi* could not fulfil both their administrative and judicial duties and the latter were delegated first to judiciary consuls and then to the *consules mercatorum*, who were at the same time the head of a guild. These consuls first appeared at Piacenza in 1154; by the end of the century they were established in practically every Italian city and almost immediately thereafter in the cities of southern France. At first each consul had jurisdiction only over the members of his own guild, and a member who withdrew from the guild could escape its jurisdiction. To obviate this a new court, the Mercanzia, was created at Florence and soon came to have jurisdiction over the members of all the guilds. In the endeavor to avoid the economic loss caused by the growing custom of reprisals its jurisdiction was about 1320 extended to foreigners and to citizens who were not members of a guild. This development was characteristic of all the Italian cities, so that before the middle of the fifteenth century these guild courts became courts peculiar to commercial causes. By that time the substantive law as to agency, powers of attorney, brokers, contracts, sales, partnership, primitive corporations, trademarks, bills of lading, warehouse receipts, negotiable instruments, insurance and reprisals was well devcloped; on the procedural side the law was summary, swiftly administered, almost free from appeals, equitable and not technical, and lawyers were not permitted to appear.

As the Italian merchants journeyed abroad they carried with them their own laws and institutions and were accompanied by a consul, as they preferred to be judged according to their own customs by one of their own countrymen. This right of colonial consular jurisdiction was sometimes granted by treaty and sometimes merely assumed as a matter of custom. It spread rapidly over southern Europe, Asia Minor and north Africa; it did not halt in Provence but extended to the northern fairs of Champagne, attended in great numbers by Italians and Provençals and where the Romance and Germanic laws and customs met and fused.

Heretofore the development of the main stream, Romance law, has been followed; now it must be shown how the Germanic law originated and flowed into the other stream. Today it is known that Rome did not "fall" in the popular sense but that there was a slow and insensible diminution of the imperial authority in the west. Under the barbarian rulers the Roman population in the west lived on under Roman law, and their legal documents were drawn according to the Roman forms. Commerce did not suddenly disappear but continued demonstrably in some volume into the seventh and eighth centuries. Undoubtedly, however, as western civilization slowly dwindled away, the business of the merchants became more difficult and more precarious. Violence became frequent and went unpunished; wars were continuous and justice was impossible. Merchants could find relief by only two methods: they could seek to control the governmental systems themselves (as in Italy and the south of France) or they could purchase special rights and privileges for themselves from the new monarchies (as in Germany and the north of France). The city-states and their guilds sprang from one method and the markets and fairs from the other: both worked for the same broad end.

The early laws of the new barbarian kingdoms created a special law for certain classes and a special jurisdiction before special judges for merchants. The procedure was swift. Safe conduct was likewise granted merchants on their travels. To assure this protection in an unsettled era and also to safeguard the rights of the king or of his concessionaire commerce in the north of Europe—no longer continuous but periodic—was concentrated in the fairs and markets, which became complete and autonomous administrative and judicial units. Where towns and markets coexisted, their officials, their courts and their law ultimately tended to become coterminous. The law of the market and the law of the merchants were identical and eventually became the law of the city. By the eleventh century a separate *jus mercatorium* had been built up in the markets upon the basis of custom and usage.

Of particular importance from the twelfth to the fourteenth century were the fairs of Champagne, for that province constituted a neutral market between Italy, Germany, the

Low Countries, France and England. The Italians attended these fairs in crowds and exercised an overwhelming influence. Not only did their consuls exercise jurisdiction over them, but there was also a general jurisdiction of special fair judges over all the merchants in attendance. Its procedure was summary, simple and equitable. No lawyers were allowed; adjournments, if any, were short; and after a summary questioning of the parties judgment was in most cases delivered at once. Execution followed without delay if the debtor or his property could be found within Champagne. If the debtor had fled, the guards of the fair at once addressed letters to the authorities of the jurisdiction in which he was to be found, demanding immediate execution. Neither negligence nor refusal was tolerated, the penalty for either being prohibition of the fairs. All the more important documents passed under the seal of the fair and thereafter had an absolute probative force. Sealed obligations were enforceable on the goods of the debtor for thirty years. In their heyday the fairs of Champagne were the clearing house of Europe, centers of banking and of exchange.

The development of the early English courts in which the law merchant was administered seems to have followed the general model of those in northern France and Germany. There were no great city republics in England; instead the towns were small, weak and dependent for their rights on charters secured from a strong monarch. Just as on the continent towns grew up about the markets and fairs, so to a lesser extent the same process went on in England. The markets particularly and the fairs generally were of considerable local and sometimes of regional but not usually of national or international importance. England in the Middle Ages lay off the main trade routes and was commercially backward. The larger transactions of foreign trade were in foreign hands; and royal privileges first, followed by their own organization later, kept the foreign merchants outside the local law. Just as elsewhere the members of each nationality kept to themselves and lived under their own laws administered by their own judges.

But English commerce steadily developed. In the twelfth century it was local; in the thirteenth it became more national; in the fourteenth it was just becoming international; in the fifteenth it was able successfully to attack the privileges of the foreign merchants. The closing of the old trade routes and the discovery of the New World put England on the main trade routes of the world in the sixteenth century and consequently led to new legal developments.

The legal procedure of the smaller English market and fair and borough courts was like that on the continent; it was swift—from hour to hour and from tide to tide—summary and without technicality; greatest of all, the merchants themselves always had a share in the administration of the law extending beyond the question of procedure to the actual content of the law itself, which before the end of the thirteenth century was recognized as a special body of law peculiar to the merchants. It had to do with contracts, covenants, breaches of warranty, sales, debts and trespasses. Obligatory writings of debt although rare at first were not unknown. Every mercantile court had a clerk and a seal, and since it was a court of record it kept plea rolls. These courts, commonly known as courts of piepowder, later, while they were dying out in England, almost secured a foothold in America; one was held in Bermuda in 1668. The borough courts were in all essential respects similar to the courts of piepowder; unlike the Italian guilds the English never acquired special privileges in them, perhaps because the merchant status was not confined to guild membership.

Meanwhile other courts were seeking the business of the merchants' courts. For a time in the fourteenth and fifteenth centuries the courts of the staple applied the law merchant; during the same centuries the nascent Court of Admiralty competed but ineffectually, both because of local antagonisms and because of its own inefficiency. From Tudor into Stuart days a revived and strengthened Court of Admiralty fought a losing fight to administer the law merchant together with the maritime law, as so many of the mediaeval courts had done. Although historical logic and commercial convenience were on its side, the increasing attacks of the common law judges on its jurisdiction were successful in the seventeenth century and the Court of Admiralty was stripped of jurisdiction over almost all commercial causes. The English merchants were traditionally never sufficiently organized to enforce their wishes; the strong royal power which had restrained the power of the towns and later that of the nobles limited also that of the guilds, and the few protests made were ineffectual.

By its absorption into the English common law the law merchant at once lost on the procedural side the swift and summary informality which had theretofore characterized it throughout Europe, and this it has never regained. As it

was still a body of customary law, the common law judges had also to be educated as to its substantive content. This was less difficult, because much of the common law rested historically upon a customary basis. Piecemeal therefore the judges obtained evidence as to the custom applicable to the particular commercial case at bar. The process was laboriously slow; for example, from the reign of Queen Elizabeth to 1756 there are not sixty cases of insurance in the English reports. Chief Justice Holt at the end of the seventeenth century and at the beginning of the eighteenth began to lay down general rules of commercial law, introducing continental doctrines as necessity required. This integration was coherently completed by Lord Mansfield in the latter half of the eighteenth century, a large body of reported precedents being thus available for American commerce after the revolution.

Uniformity is of the essence of the law merchant. It has resulted from the necessary and permanent conditions of trade, whether national or international. These conditions have demanded various substantive rules, some of them fairly permanent and others changing from time to time with altered conditions. Usually it has not been difficult to make such changes, because the people who lived under the law merchant have generally had the power to alter it by custom. Legislatures and courts alike recognize the power of commercial custom to do today what it did in the past. Of the law merchant an English court has said: "It is neither more nor less than the usages of merchants and traders . . . ratified by the decisions of courts of law, which upon such usages being proved before them, have adopted them as settled law." Several of the most widely adopted modern uniform statutes contain the statement that in any cases unprovided for therein, the rules of the law merchant shall govern. The law as to trust receipts and letters of credit is almost wholly an outgrowth of modern commercial custom.

In 1306 Pope Clement v by his bull *Saepe contingit* defined the meaning of the directions theretofore almost universally given to the judges of commercial courts to proceed swiftly, plainly and without technicality. In these respects it must be conceded that modern courts administering the modern law merchant could learn from their predecessors of six centuries ago.

FREDERIC ROCKWELL SANBORN

See: COMMERCIAL LAW; COURTS, COMMERCIAL; MARITIME LAW; COMMERCE.

Consult: Morel, François, *Les juridictions commerciales au moyen âge* (Paris 1897); Mitchell, William, *An Essay on the Early History of the Law Merchant* (Cambridge, Eng. 1904); Holdsworth, W. S., *A History of English Law*, 9 vols. (3rd ed. London 1922–26) vols. i, v and viii; Sanborn, F. R., *Origins of the Early English Maritime and Commercial Law* (New York 1930). See also the bibliography under COMMERCIAL LAW.

LAW OF NATURE. *See* NATURAL LAW.

LAW REFORM. *See* JUSTICE, ADMINISTRATION OF; SOCIAL REFORM; PROCEDURE, LEGAL.

LAWES, SIR JOHN BENNET (1814–1900), English agricultural chemist. Lawes was born at the manor house, Rothamsted, Hertfordshire. When he came of age he took over the management of the home farm and installed a chemical laboratory. He turned in 1837 from the study of drugs to that of the relations between chemistry and agriculture, experimenting on the nutrition of plants in pots and testing results on his field crops. The treatment of bones with sulphuric acid was already known. But by applying the process to apatite, coprolite and other mineral phosphates he indefinitely increased the supply of the materials of efficacious manures. In 1842 he took out a patent for superphosphate and established factories for its production at Deptford in 1843 and at Barking in 1857. Lawes was thus the founder of a national industry for the manufacture of products which have revolutionized agriculture. Of equal significance was the fact that he used the fortune he acquired from these activities to conduct those field and feeding shed experiments and laboratory investigations in the plant and animal life of the farm which have made the experimental station at Rothamsted so famous in the world of agricultural science. The results of these researches, systematically begun in 1843 with the assistance of Joseph Henry Gilbert and carried on ever since, have established general principles of the nutrition of plants and animals which are universally applicable. In order to insure their continuance Lawes in 1889 created the Lawes Agricultural Trust, to which he assigned the buildings and land for a long term of years as well as an endowment fund of £100,000.

ERNLE

Important works: "The Rothamsted Experiments" (in collaboration with Joseph Gilbert), Highland and Agricultural Society of Scotland, *Transactions*, 5th ser., vol. vii (1895). The same text, with only minor verbal changes, is printed under the title *Agricultural Investigations at Rothamsted, England, during a Period of Fifty Years*, United States, Office of Experiment

Stations, Bulletin, no. 22 (1895). For a bibliography of the more important papers issued by Lawes and Gilbert, see Appendix to Hall, A. D., *The Book of the Rothamsted Experiments* (2nd ed. London 1917) p. 311–22.

Consult: Warington, R., "Biographical Introduction: Sir John Bennett Lawes, Bart. 1814–1900" in Hall, A. D., *The Book of the Rothamsted Experiments*, p. xxi–xxxii.

LAWGIVERS. Common usage generally distinguishes between lawgiver and legislator, limiting the first term to a person who promulgates a code of laws and the second to the author of a single statute or series of statutes. But there has often been an unfortunate confusion between the two terms. Nor is the lumping of both ideas under a single word, as in the German *Gesetzgeber* (statute giver) and the French *législateur* (proposer of a statute), any more desirable. The difficulty in these cases as well as in other modern European languages is due to the failure to differentiate clearly between law (*Recht*, *droit*) in its wide sense and statute (*Gesetz*, *loi*) in the narrow meaning of a particular law. In Latin the word *legislator* is employed to indicate the proposer of a law, whether he be emperor or jurist; *jurislator* or *jurisdator* is never found, while *legem dare* (to give a law) and *lex data* (a given law) refer respectively to the granting of a private right and the enactment of a statute by an official without concurrence of the popular will (e.g. *lex coloniae genetivae*). A lawgiver such as Justinian was probably termed *legislator*. In Greek there prevailed a confusion similar to that which exists in English. *Thesmos* originally meant a single sentence or statute, *nomos* the body of law. Solon himself considered that he issued *thesmoi* (statutes), while Aristotle two hundred and fifty years later wrote of him as a lawgiver.

The first requisite of a lawgiver seems to be divine inspiration. Thus Hammurabi declares in the preface to his code that the god Marduk directed him to deliver the principles of justice to the people; the Sumerian Urukagina received the law from Ningirsu; Moses was the deputy of the Lord in the Ten Commandments and His oracle in the Pentateuch; Athena in a dream communicated the laws of the Locrians to the lawgiver Zaleucus. In some cases the lawgiver was the deity; in others he was identified with a deity and thus considered semidivine. The earliest English usages of the term constantly refer to "God, the lawgiver"; non-Christian religions have likewise attributed this function to their supreme deity. Manu, the Brahman lawgiver, was a minor deity and Menes and other Egyptian lawgivers, such as Ramses II and Bocchoris, were pharaohs and thus semidivine. Elsewhere a minor deity, later demoted to the position of hero, is considered divinely inspired when he acts as lawgiver.

A plurality of contemporary lawgivers is never possible. The decemviri who formulated the Roman Twelve Tables would seem to comply with the necessary conditions, yet they were not considered lawgivers by the Romans nor do moderns so regard them. But certain codifications attributed to absolute rulers were conceived of and executed by commissions, as, for example, the *Corpus juris* of Justinian and the *Code Napoléon*, known earlier as the *Code civil des français*; other laws, such as those forming the Code of Hammurabi, were probably enacted by commissions of jurists.

Lawgivers are never known as such by their contemporaries. Stalin and Kemal Pasha may in time be called lawgivers; today they are but legislators. Draco, considered by his contemporaries merely as a special judge (*thesmothetes*) issuing decrees (*thesmoi*) which, provided they were accepted by the populace, might eventually become law (*nomos*), was termed a lawgiver by fourth century Greeks and is so considered by the modern world. Theodosius II, the author of the *Codex theodosianus*, was called a "preserver of statutes and decrees"; today he is known as a lawgiver.

A curious relationship exists between lawgiver and judge. The old Germanic lawgiver (Danish *lov-giver*) was actually the judge, and such is the technical usage of the term among legal scholars today. It is to be noted, however, that the absolute rulers who have been mentioned as lawgivers were also judges to their contemporaries. In his code Hammurabi speaks of giving law (*mīšaram šakanu*), while in contemporaneous Babylonian documents the king judges (*mīšaram šakanu*) in private causes of action. It has been pointed out that Draco was a judge (*thesmothetes*); the Roman jurists looked upon their emperors as interpreters of the law rather than as originators. The relationship of judge and lawgiver is no doubt due to the idea so prominently displayed in Germanic and Anglo-American law that the judge is enabled to create the law *ex vacuo* by reason of his divine inspiration.

The nature of the law uttered by the lawgivers varies greatly. It may be in the main religious

and theological, as the Pentateuch of Moses and the Koran of Mohammed; the point of view may be military, as in the legendary enactments of Romulus or Lycurgus; or the penal element may be emphasized, as in Hammurabi's code or Draco's decrees; it may even be purely theoretical and only a goal to be attained, as the utterances of Manu. But modern research has discovered what seems to be a common element in the law enacted by all lawgivers: despite denial by the lawgiver the law given is not generally new but a codification of existing customary law, juristic utterances or legislative enactment. Investigation has shown this to be true of the Code of Hammurabi; the Mosaic code is most likely a codification; Justinian himself tells us that the *Corpus juris* (except of course the *Novellae*) is for the most part a compilation of statutory and juristic materials. This is also true of other legislation: the Twelve Tables, which were not compiled by a lawgiver, and the Laws of Gortyn, whose lawgiver is unknown, are codifications of existing law. Similar to these and yet never attributed to lawgivers are the compilations made by private individuals and termed law books, such as the Syrian Roman law books, whose author is known; and the Assyrian law books (often erroneously called a code), whose author is unknown. The character of the law cannot therefore be correlated with the presence of a lawgiver.

Urukagina, the Sumerian ruler of Lagash (*c.* 2750 B.C.), and Nabunaid of neo-Babylonian times (556–539 B.C.) are important as givers of cuneiform law; Hammurabi, ruler of Babylonia (dates unknown), is of course of outstanding significance. But no lawgiver was responsible for the Assyrian law books of the fifteenth and fourteenth centuries B.C. nor for the collection of enactments of various dates known as the Hittite code (written *c.* 1350 B.C.). The Greek writer Diodorus mentioned as Egyptian lawgivers the pharaohs Menes (*c.* 3400 B.C.), Ramses II (1292–1225 B.C.) and particularly Bocchoris (718–712 B.C.) and Amasis (569–525 B.C.), but this information is not as yet substantiated by hieroglyphic sources. Moses is the supreme giver of Jewish law, although he certainly did not write all that has been attributed to him. Many of the prophets might be considered lawgivers. For Talmudic and rabbinical times the jurists Judah ha-Nasi (second century A.D.), Maimonides (1135–1204) and Joseph Karo (1488–1575) are perhaps worthy of the name. The earliest Greek lawgivers were colonials: Zaleucus (*c.* 650 B.C.) of Achaean Locris and Charondas (*c.* 650 B.C.) of Ionian Catana. In the homeland the legendary Lycurgus of Sparta and the renowned Draco (*c.* 621 B.C.) and Solon (*c.* 594 B.C.) of Athens were lawgivers of the first rank. The Hellenistic legal system had no outstanding lawgiver, unless Ptolemy Philadelphus (285–246 B.C.) of Egypt be so designated. The ancient kings of Rome, notably Romulus and Numa, have been termed lawgivers, but strictly speaking it was not until the absolute empire that Roman rulers attracted world wide attention through their achievements in codification; the *Codex* of Theodosius II (published 438 A.D.) was merely a compilation of statutory material, whereas the *Digesta* and *Codex* of Justinian (527–65) encompassed both legislation and juristic literature. In a sense some of the classical jurists whose work Justinian collected—among others, Julian (second century), Papinian (d. 212) and Paul (first half of the third century)—might be designated lawgivers because their interpretation was instrumental in the creation of bodies of law. For other ancient legal systems, such as the Chinese and Japanese, lawgivers are, at least to occidental thought, unknown. Manu and the less known Yājnāvalkya (fourth century) were outstanding Hindu lawgivers.

Mediaeval Germanic law is almost entirely without lawgivers; the legislation is anonymous and the true lawgiver is the judge. There are, however, a few exceptions: the code for non-Goths issued by the Gothic kings Alaric II (484–507) and Theodoric (*c.* 500); the code of Alfred, king of the West Saxons (878–901); and the *Constitutio criminalis carolina* of Charles V (1519–58). Among the Slavic peoples lawgivers were more numerous, although here also anonymity was general. The Celtic king Howel (909–50), author of the Welsh code, qualifies as lawgiver. In Islamic law there is but one recognized lawgiver, Mohammed (*c.* 570–632), author of the Koran. As among the Romans, however, jurists and founders of schools—for example, abu-Ḥanīfah (*c.* 699–767), Mālik (715–95), al-Shāfi'ī (767–820) and ibn-Ḥanbal (780–855)—might be so designated. If the term were acceptable with regard to canon law, Innocent III (1198–1216), who was responsible for the *Corpus juris canonici*, and Gregory IX (1227–41), author of many decretals, would be the great lawgivers.

Since the Middle Ages practically every nation has had one or more lawgivers, but of these only Napoleon has achieved universal fame. The one great legal system which has no outstanding

lawgiver is the Anglo-American; and because the concept is so difficult to define, it would be idle to attempt to enumerate the English rulers or the Anglo-American jurists who might be so designated.

A. ARTHUR SCHILLER

See: LAW; CODIFICATION; JUDICIAL PROCESS.

Consult: Koschaker, P., *Babylonisch-assyrisches Bürgschaftsrecht* (Leipsic 1911) p. 10–11, especially note 41; Walther, A., *Das altbabylonische Gerichtswesen*, Leipziger Semitistische Studien, vol. vi, pts. 4–6 (Leipsic 1917) p. 80–103; Smith, J. M. P., *The Origin and History of Hebrew Law* (Chicago 1931) p. 173–80; Menes, A., and Bialoblocki, S., "Gesetze," and Gorion, Emanuel bin, "Gesetzgebung" in *Encyclopaedia judaica*, vol. vii (Berlin 1931) cols. 355–83; Weiss, E., *Griechisches Privatrecht auf rechtsvergleichender Grundlage*, vol. i– (Leipsic 1923–) p. 29–133; Bonner, R. J., and Smith, G., *The Administration of Justice from Homer to Aristotle*, vol. i (Chicago 1930–) ch. iii; Mommsen, Theodor, *Römisches Staatsrecht*, Handbuch der römischen Alterthümer, vols. i–iii, 3 vols. (3rd ed. Leipsic 1887–88) vol. ii, p. 881–83, 888–94, and vol. iii, p. 308–12; Kreller, H., "Zur Lehre der klassischen Juristen über das Gesetzgebungsrecht des Prinzeps" in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung*, vol. xli (1920) 262–72; Jolly, J., *Recht und Sitte*, Grundriss der indo-arischen Philologie und Altertumswissenschaft, vol. iii, pt. 8 (Strasbourg 1896), tr. by B. Ghosh as *Hindu Law and Custom* (Calcutta 1928) p. 1–101; Macieiowski, W., *Historya Prawodawstu Stowianskich*, 4 vols. (Warsaw 1832), tr. into German by F. J. Buss as *Slavische Rechtsgeschichte* (Stuttgart 1835–39) vol. i, p. 206–12; Rahim, Abdur, *The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools* (Madras 1911) ch. ii, and ch. iii, sect. i.

LAWLESSNESS is a term applied to the behavior of a social group which is considered to be consistently refractory and to be habitually breaking important legal rules. It is, however, an extremely treacherous term. The judgment that the group is violating important rules and is therefore lawless is usually that of some outsider. More often than not this outsider when he calls a group lawless possesses no reliable information as to its actual habits; for statistics of "offenses known to the police" are virtually non-existent in most countries, and where they are available they reflect not the extent of criminality but the degree of police efficiency. Most accusations of lawlessness leveled at a group are expressions of an egocentrism that persists in judging the behavior of another group in terms of the standards and prejudices of one's own. The Indians are lawless judged by the norms of their English administrators, and to Americans with a stake in Central America the Nicaraguan nationalists are merely brigands. Pascal remarked that "three degrees of latitude reverse all jurisprudence; a meridian decides the truth," and that "theft, incest, infanticide, patricide have all had a place among the virtues." The entire concept of lawlessness is confused by the narrowness of group attitudes and the relativity of legal standards.

The term lawlessness is thus more often used as an epithet charged with emotion than as a sober description of fact. Typical is the generalization that in certain races or nations there is an "instinct" or "tendency" to lawlessness. That thesis is patently absurd when it purports to be based upon the fact that in a given country acts frequently occur which while within the law of that country would be criminal if committed in many other countries; the supposed lawlessness signifies only that not all groups have the same criminal code.

The concept of a national tendency to lawlessness becomes more plausible when it is asserted that some nations are peculiarly accustomed to infringe their own laws. It is possible —although there are no adequate statistics to confirm the supposition—that the French are less given to obedience to the provisions of the enacted code (what is called civism) than the English. In like fashion much is made of American lawlessness; attention is drawn to the fact that the United States constitution was adopted in direct violation of the Articles of Confederation, that the "best citizens" in some sections proudly defy the Fifteenth and the Eighteenth Amendment and that every American infringes numerous penal laws every day.

But it must first be noted that in this habit of ignoring their own laws the French and Americans are not unique: every group violates not only the rules that other groups consider important but even some of its own rules. All groups have their pseudo-standards, their "pretend rules"; it is part of the rules of any group to break some of its own rules. Greeks and Trobrianders, New Yorkers and Hottentots, not only preserve but currently produce apparently significant rules which they circumvent or openly violate but which they refuse to abandon. It may well be true that France and the United States are more addicted to the enactment of pretend rules and more reluctant to repeal them than England. It is probably true also that national modes of dealing with unrepealed pseudo-standards differ; the French and Americans prefer openly to break such rules, while the

English prefer to circumvent them by deft use of legal exegesis, subtle judicial interpretations. But the pronounced pseudo-standardism of the French or Americans may be fully as conducive to group welfare as the much praised civism of the English. Regardless of these differences, in all groups the pretense of strict obedience to the law is customarily maintained; and even where statutes have been enacted which go beyond the point where widespread enforcement is possible, the cry of "law enforcement" is continually raised (*see* LAW ENFORCEMENT).

Since the violation of some laws is a normal part of the behavior of every member of every group, lawlessness reduces to a charge of a mistaken selection of the existing laws which are to be ignored. It is evident that the notions of what constitutes such a mistaken selection vary from group to group and are not uniform even within any particular group. Religious, political and economic stratifications cut across each legal community; the attitudes of any individual are conditioned by a complex of influences impinging upon him from his various relationships. His conception of what laws may be violated or ignored without serious hurt to his "moral sense" is likely to be a resultant of these influences. By appropriate selection any subgroup can prove that some other subgroup is lawless. Thus the lawlessness of the "lower classes" is apt to run in terms of crimes of violence, that of the "upper classes" in terms of crimes involving fraud.

The seeming lawlessness of any group is the result of the gap between the legal standards apparently set by the political community and the more exigent ethical standards and psychological drives operative within that particular group. That part of the "law" that is actually placed on the statute books and enforced rests at best on a narrow base which is made all the narrower by the successive selective processes that are at work in molding it. What is placed on the statute books is in theory the expression of a "general will": in actuality it is the expression of the wishes of the dominant political group and economic class or the result of the interaction of various pressure groups or even the arbitrary and whimsical desire of some individual legislator. Which of the statutes that are thus enacted will appear to be broken depends on further selection through the activities of the law enforcing agencies. If a police chief or a public prosecutor determines to enforce a specific code provision, violation of that provision will become lawbreaking, while others that are not thus enforced remain in obscurity. Discrimination in the arrest and prosecution of Negroes, Mexicans and radicals will make those groups seem unusually lawless. There remain as the final selective agency the judge and the jury. No matter who violated the statutes, only those whom the judge and the jury (correctly or incorrectly) choose to find guilty will appear as lawbreakers.

The modern state brands direct private vengeance lawless and claims a monopoly of crime punishment; the judicial process has become the lawful substitute for private war; it supplants the quarrel with fists or with lethal weapons by the battle of the court room. But in that battle there are elements that may be of incalculable harm to the group spirit. The barbarity of third degree police methods is notorious. And even in court room procedures such "lawful" devices as the failure to reveal important evidence, the deliberate obscuring of issues, the browbeating of foreigners and radicals, the appeal to the crude prejudices of a jury, are not unknown. Added to this is the unequal financial capacity of the various classes for a prolonged court battle. Together these factors may make of court procedure an instrument of chicane and of the oppression of the innocent and the submerged. And as the state monopoly of crime punishment is often inefficiently administered, many criminals are protected from harm at the hands of law abiding citizens who obey the law which forbids private vengeance. Such results may be more subversive of group welfare than is the lawlessness of open brigandage or outright murder.

Once it is recognized that relativity and egocentrism are inherent in the concept of lawlessness, the problems of so-called frontier lawlessness, immigrant lawlessness and racketeering change their character. The frontiersmen faced a social situation which seemed to them to demand that the laws prohibiting self-help, made in more settled communities, should be selected for non-enforcement. Those pioneers were no more lawless than are New Yorkers, who seldom if ever seek to enforce the statute making male adultery a crime. Alleged lawlessness of any subgroup when carefully scrutinized usually turns out to be the breaking of laws made elsewhere or by someone else—the someone else being sometimes a past generation. The subgroup accused of lawlessness, acting under the pressure of a specific social situation (often

involving too rapid transition), is making a revised choice of the rules which are to be treated merely as pretend rules. In these terms modern urban racketeering, the Mafia and Camorra in America, the seeming lawlessness of the second generation of immigrants or of Negroes in the United States, are in some considerable measure explicable. In the same way one finds a key to a product of capitalist society, the violation of the criminal code, in the exploitation of the huge chances for profit under individualist enterprise, where the stakes are high, the situation is a rapidly shifting one and the slow moving legislative and judicial machinery has left irritating obstacles in the way of business enterprise.

Little help and much hindrance in dealing with the problems of social control is rendered by the use of the word lawlessness. At its best it connotes an absence of law. But the symbol "law" is itself fatally ambiguous; by usage it may properly be employed to symbolize a dozen different subject matters; there is a growing inclination to abandon it as a useful label. Lawlessness as a symbol is still more vague and confusing. It should be excluded as far as possible from the vocabulary of careful students of society. Whenever it is encountered, it should be subjected to wise skepticism, washed in what Mr. Justice Holmes called "cynical acid."

JEROME FRANK

See: LAW ENFORCEMENT; CONSTITUTIONALISM; VIOLENCE; CRIMINAL LAW; CRIME; POLICE; JUSTICE, ADMINISTRATION OF; GANGS; RACKETEERING; BRIGANDAGE; FEUDS; LYNCHING; RACE CONFLICT; FRONTIER.

Consult: Malinowski, Bronislaw, *Crime and Custom in Savage Society*, International Library of Psychology, Philosophy and Scientific Method (London 1926) p. 112–29; Sumner, W. G., and Keller, A. G., *The Science of Society*, 4 vols. (New Haven 1927) vol. i; Duguit, Léon, *Les transformations du droit public* (Paris 1913), tr. by Frida and H. J. Laski as *Law in the Modern State* (New York 1919) ch. iii; Wigmore, J. H., "The Judicial Function," and Wurzel, K. G., "Methods of Juridical Thinking" in *Science of Legal Method*, ed. by R. Gray, Modern Legal Philosophy series, vol. iv (Boston 1917) p. xxx, xl, and 341–52; Frank, Jerome, *Law and the Modern Mind* (New York 1930), "Are Judges Human?" in *University of Pennsylvania Law Review*, vol. lxxx (1931–32) 17–53, 233–67, "What Courts Do in Fact" in *Illinois Law Review*, vol. xxvi (1931–32) 645–66, 761–84, and "Mr. Justice Holmes and Non-Euclidean Legal Thinking" in *Cornell Law Quarterly*, vol. xvii (1931–32) 568–603; Warner, S. B., "Crimes Known to the Police—an Index of Crime?" in *Harvard Law Review*, vol. xlv (1931–32) 307–34; United States, National Commission on Law Observance and Enforcement, *Reports*, nos. 2, 3, 4, 7, 10, 11, 13 and 14 (1931); Arnold, J. W., "Progress Report on Study of the Federal Courts—No. 7" in American Bar Association, *Journal*, vol. xvii (1931) 799–802; Tourtoulon, Pierre de, *Les principes philosophiques de l'histoire du droit*, 2 vols. (Paris 1908–19), tr. by M. M. Read as *Philosophy in the Development of Law*, Modern Legal Philosophy series, vol. xiii (New York 1922) p. 114–16, 120–28.

LAWRENCE, SIR HENRY MONTGOMERY and FIRST BARON, JOHN LAIRD MAIR, British colonial administrators. Sons of Anglo-Indian parents of north Irish extraction, Henry (1806–57) was educated at Addiscombe and John (1811–79) at Haileybury, the first joining the Bengal Artillery and the second the Indian civil service. Both attracted the attention of Lord Hardinge and were employed, Henry in 1847 as resident at Lahore and John in 1846 as commissioner of the Jalandhar country ceded after the First Sikh War. The duties of Henry as resident were exacting. He was expected to reorganize by persuasion and personal influence the Sikh government, which had broken down after the death of Ranjit Singh in consequence of the self-seeking of the nobles and the failure of control over the army. The great problem was how to introduce reforms without the ostensible use of British agency. This in fact proved insoluble. After the Second Sihk War, when Dalhousie annexed the Punjab, Henry became head of the board to which the administration was entrusted. Like Elphinstone he aimed at maintaining the position and influence of the great landholders, considering that they were the natural leaders of the people and that reforms should be introduced by their means and cooperation. In this policy he came into sharp conflict with his brother, who was also a member of the board. Whereas Henry's experience had lain mostly among princes and nobles, John's had brought him into close touch with the peasantry of the country. In Jalandhar he had been struck by the degree in which the peasant was exploited by the noble and had formed the view that the main object of British effort should be to deliver him from this exploitation. Dalhousie sympathized with John's views and was glad to be able in 1853 to remove Henry from the Punjab by appointing him resident in the Rajput states, where his sympathy with Indian nobles could receive free play without involving principles of national policy. In 1857 Canning appointed Henry chief commissioner of Oudh after the annexation of that province. But the mutiny broke out too speedily to allow his administrative gifts to be fairly tested. He was killed in 1857 defending the residency at Lucknow. Meanwhile John had

been entrusted with the management of the Punjab. There his policy succeeded so far that when the mutiny broke out, the Sikhs strongly supported the British against the mutineers, who consisted mainly of Rajputs, Brahmans and Moslems from Oudh and the neighboring country. He retired after the mutiny but in 1863 was appointed viceroy, being the only civil servant in seventy years to attain that rank. As governor general he was less successful than as ruler of the Punjab but did much to promote the interests of the agricultural classes by extending railways and irrigation and insisting on administrative economy. He retired in 1869 and died in England ten years later.

H. H. DODWELL

Consult: Edwardes, Herbert, and Merevale, H. C., *Life of Sir Henry Lawrence* (3rd ed. London 1873); Smith, Reginald Bosworth, *Life of Lord Lawrence*, 2 vols. (6th ed. London 1885); Aitchison, C. U., *Lord Lawrence* (Oxford 1892); Innes, J. J. M., *Sir Henry Lawrence, the Pacificator* (Oxford 1898).

LAWS OF WAR. *See* WARFARE.

LAZĂR, GHEORGHE (1779–1823), Rumanian educator. Lazăr, who came of Transylvanian peasant stock, studied mathematics and theology at the University of Vienna. Because of his passionate enthusiasm for Napoleon he failed to secure the bishopric of Karlowitz and was refused appointment to the chair of theology at Czernowitz. He taught for a while at the theological seminary in Sibiu and after the overthrow of Napoleon he went to Bucharest. In 1816 he established at the monastery of Saint Sabbas the first national Rumanian school of applied science and engineering and in 1818 published an appeal to the Rumanian youth to patronize this school and to rise against the dominance of Hellenic cultural influences in Moldavia and Wallachia. By his stress of the use of the Rumanian vernacular he laid the foundations for a national Rumanian culture in Wallachia at almost the same time that Gheorghe Asachi and Veniamin Costachi were establishing the first Rumanian schools in Moldavia. A prolific and versatile author, Lazăr wrote on mathematics, geography, philosophy, history and theology. All his writings were prompted by a nationalist motive, and he has come to be recognized as the initiator of the Rumanian national renaissance.

CHRISTINE GALITZI

Consult: Georgescu, Ioan, *Gheorghe Lazăr* (Bucharest 1923); Iorga, Nicolăe, *Cel dintăi învătător de ideal național Gh. Lazăr* (Bucharest 1916), and *Istoria Românilor* (7th ed. Valenii-de-Munte 1929), tr. from 2nd ed. by J. McCabe as *History of Roumania* (London 1925); Eliade, Pompiliu, *De l'influence française sur l'esprit public en Roumanie* (Paris 1898) p. 311–18, and *L'esprit public en Roumanie au XIXe siècle* (Paris 1905).

LAZARUS, MORITZ (1824–1903), German psychologist. After obtaining his degree from the University of Berlin in 1850 Lazarus first published an essay in which he attempted to justify Prussia's hegemony in Germany. He then wrote a series of psychological monographs later collected under the title of *Das Leben der Seele* (2 vols., Berlin 1856–57; new ed., 3 vols., 1882–85), during the preparation of which he formulated as early as 1851 the principles of his collective or group psychology. In 1860 he and Heymann Steinthal, his brother-in-law, launched the *Zeitschrift für Völkerpsychologie und Sprachwissenschaft*, which served as an organ for their scientific views. In the same year Lazarus was appointed professor of psychology at the University of Berne but in 1867 he returned to Berlin, where after serving a few years as instructor of philosophy at the Berlin Royal Military Academy he was eventually given the title of honorary professor at the university.

Lazarus was a devoted follower of Herbart in both his philosophy and his psychology, but his conception of a collective psyche as distinct from an individual mind was original. He stressed the fact that psychological investigations cannot confine themselves to the study of individual consciousness but must take into consideration history and comparative cultures. He was charged with holding the mystical view of a superindividual soul and drew the criticism of many contemporary writers, especially Wundt, who, however, later developed his own system of collective psychology. Lazarus conceived of a group mind as a functional unit integrative of the constituent individual minds. Language was for him the essential bond among the members of a nationality —territory, religion, common traditions and history being rather propria.

Lazarus' strenuous communal activity and organizing ability as well as his benign personality contributed to his far reaching influence. He rendered considerable service as a Jewish apologist in combating antisemitism; his sentiments on the Jewish problem were assimilationist in tone. His work *Die Ethik des Judenthums* (Frankfort 1898, 2nd ed. 1899; tr. by H. Szold, 2 vols., Philadelphia 1900–01), although by on

means adequate, is an important contribution to this sparsely explored field.

A. A. ROBACK

Consult: *Moritz Lazarus Lebenserinnerungen*, ed. by N. R. Lazarus and A. Leicht (Berlin 1906); Münz, B., *Moritz Lazarus* (Berlin 1900); Achelis, T., *Moritz Lazarus* (Hamburg 1900); Leicht, A., *Lazarus als Begründer der Völkerpsychologie* (Leipsic 1904); Roback, A. A., "The Jewish Founders of Collective Psychology" in *American Jewish Chronicle*, vol. iii (1917) 671–73; Lewkowitz, A., "Moritz Lazarus zum 100. Geburtstag" in *Monatsschrift für Geschichte und Wissenschaft des Judentums*, vol. lxviii (1924) 185–92.

LAZZARI, COSTANTINO (1857–1928), Italian labor leader. Lazzari had no formal schooling but read widely, especially during his frequent imprisonment. After working as printer and traveling textile salesman he joined the labor movement and became one of its best orators. He was active in the first Italian workers' political organization, the *Figli del lavoro*, founded in 1871, and in 1882 inspired the unification of its sections in the *Partito operaio italiano*, on whose executive he served for many years. Under his leadership the party having decided to admit intellectuals transformed itself in 1890 into the *Partito dei lavoratori italiani* and in 1892 after breaking with the anarchists became the *Partito socialista italiano*.

From the outset Lazzari was a thoroughgoing Marxist in theory and tactics and one of the most effective Marxist propagandists in Italy. He fought the influence of both Bakuninists and republicans and especially of the opportunist socialists led by the revisionist Turati. Lazzari successfully defended his revolutionary views at thousands of party meetings and in the party press, and in 1912 a left wing majority elected him party secretary. He led the party in opposing the patriotic position taken by other socialist parties in violation of the resolutions of the international congresses of 1907, 1910 and 1912. It was Lazzari's policy "neither to approve nor hinder" Italy's participation in the World War. Lazzari played a leading role in obtaining the dismissal of Mussolini from the editorship of *Avanti* in October 1914 for betraying the party, and his proposal to expel Mussolini was almost unanimously adopted. Although he admired the Russian Revolution and Lenin, Lazzari opposed the conditions which the Third International wished to impose upon the Italian Socialist party; because the party followed his lead it was expelled from the Third International. In 1919 Lazzari was elected to Parliament. He regarded as weak the decision of the left parties to boycott Parliament as a protest against the murder of Matteotti: he went to the Chamber to protest against the restoration of capital punishment but was violently thrown out. After this incident he retired; he died in great misery in Rome. From the beginning of the organized labor movement until the establishment of Fascism Lazzari was the leading left wing Socialist in Italy.

ANGELICA BALABANOFF

Consult: Angiolini, A., *Socialismo e socialisti in Italia* (Florence 1900); Balabanoff, Angelica, *Die Zimmerwalder Bewegung 1914–1919* (Leipsic 1928), and *Wesen und Werdegang des italienischen Fascismus* (Vienna 1931); Michels, Roberto, *Sozialismus in Italien: intellektuelle Strömungen* (Munich 1925).

LEA, HENRY CHARLES (1825–1909), American historian. A native of Philadelphia, Lea entered his father's publishing firm at the age of eighteen and for a number of years devoted himself to business and to literary criticism. Ill health and the distraction of the Civil War delayed until 1866 the publication of his first major work, *Superstition and Force* (Philadelphia; rev. ed. 1892). The appearance in the following year of his *An Historical Sketch of Sacerdotal Celibacy in the Christian Church* (Philadelphia 1867; enlarged to two volumes, 3rd ed. New York 1907) established clearly the direction of his studies; his subject was the Latin church, "the great fact which dominates the history of modern civilization." His *Studies in Church History* appeared in 1869 (Philadelphia; 2nd ed. 1883), followed after a gap of eighteen years by *A History of the Inquisition of the Middle Ages* (3 vols., New York 1887–88; rev. ed. 1906); *Chapters from the Religious History of Spain Connected with the Inquisition* (Philadelphia 1890); *A Formulary of the Papal Penitentiary in the Thirteenth Century* (Philadelphia 1892); *A History of Auricular Confession and Indulgences in the Latin Church* (3 vols., Philadelphia 1896); *The Moriscos of Spain, Their Conversion and Expulsion* (Philadelphia 1901); *A History of the Inquisition of Spain* (4 vols., New York 1906–07); and *The Inquisition in the Spanish Dependencies* (New York 1908). Severing his active connection with the firm in 1880, he concentrated on building up with the aid of the fortune he had accumulated the valuable library of printed books and the vast collection of manuscripts for his historical work which are now in the library of the University of Pennsylvania.

Lea was both an original historian and a pioneer of historical study in the United States.

He always went to the sources and studied them profoundly, sometimes to the neglect of secondary material. Maitland summed up his achievement thus: "It is Dr. Lea's glory that he is one of the very few English-speaking men who have had the courage to grapple with the law and the legal documents of Continental Europe. He has looked at them with the naked eye instead of seeing them—a much easier task—through German spectacles." The naked eye was that of a scientific worker with an ethical bent and a hatred of unnecessary suffering and injustice. "I commenced my medieval studies," he once wrote, "without any preconception adverse to Catholicism, but I found the Church as a political system adverse to the interests of humanity. Against it as a religion I have nothing to say." Lea's work on the Inquisition won praise from Lecky, Maitland, Acton, Molinier and Paul Fredericq. Catholic criticism has fastened on Lea's lack of theological knowledge and his alleged unfairness in the interpretation of mediaeval documents. But this condemnation is restricted to a few parts of his work only; the depth and the minuteness of Lea's knowledge is generally admitted. The objectivity of his treatment had a great effect upon American historical learning, while his career and methods showed how the resources of Europe might be made available to the serious American investigator.

E. F. JACOB

Consult: Bradley, E. S., *Henry Charles Lea, a Biography* (Philadelphia 1931), with bibliography; Cheyney, E. P., and others, in American Philosophical Society, *Proceedings*, vol. l, no. 198 (1911) iii–xli; *Henry Charles Lea, 1825–1909* (Philadelphia 1910), a privately printed memoir; Haskins, C. H., in his *Studies in Medieval Culture* (Oxford 1929) p. 256–62, reprinted from Massachusetts Historical Society, *Proceedings*, vol. xliii (1909–10) 183–88; Baumgarten, P. M., *Die Werke von Henry Charles Lea und verwandte Bücher* (Münster 1908), tr. as *Henry Charles Lea's Historical Writings* (New York 1909).

LEADERSHIP may be broadly defined as the relation between an individual and a group built around some common interest and behaving in a manner directed or determined by him. It must be distinguished from two somewhat analogous relationships, which flank its widely varying forms at each extreme. If the dominant individual holds his power by virtue of an external convention, such as custom or law, he becomes the agent of authority and the group consists not of followers but of subordinates. If, at the opposite pole, his position rests upon nothing more than his capacity to appeal to the members of the group through stimulating their emotions and offering suggestions to their instincts, he is to be classed as an agitator or as a demagogue (in the derogatory sense of this term), acting upon a mob in which individuals virtually cease to be independent agents. Strictly speaking, the relation of leadership arises only where a group follows an individual from free choice and not under command or coercion and, secondly, not in response to blind drives but on positive and more or less rational grounds. In the specific instance the conceptual distinctions between leadership, the exercise of authority and demagogy of course tend to become attenuated; one phenomenon may easily pass into another in the course of a single sequence of events. But in general leadership implies a following whose behavior is the result of a conscious consideration of the leader's personality, of its own interests and of the anticipated social consequences.

Leadership in the strict sense admits differentiation into two types, which may be appropriately designated as representative or symbolic and dynamic or creative leadership. All groups whether created by custom and tradition or purposefully organized have common interests and needs, which call for action. A representative leader is an individual who satisfies the expectations of the group by acting on its behalf. Striking illustrations of representative leadership are provided by legendary or quasi-legendary figures: the Homeric or Old Testament hero in the van of the fight or in single handed combat with the common foe; the valorous benefactor of mankind, destroying monsters, breaking the wilderness to the plow or prevailing against the flood; the sage who discovers the means of solving a dispute between two tribesmen; figures like Achilles and David, Heracles and Theseus, Siegfried and Roland, the shrewd Arabian caliph and the wise dervish of India. The static conditions of primitive life everywhere reveal the phenomenon of one or more individuals leading the group from which they are differentiated on the basis of their real or accepted distinctive prowess in its traditional activities: the process of selection may be more or less mechanical, as in the case of the gerontocracy of the totemic civilizations of central and southern Australia; or it may depend primarily upon personal qualities, as among the North American Indians. Pontiac and other Indian leaders, as has been shown by recent anthropological investigations, afford abundant illustration of the personal traits

and devices which permit an individual to become the center of group activity without changing its essential direction. In modern as in primitive times and in all spheres—military, political, economic, technological, cultural, religious—leaders in the sense of preeminent representatives of their group exercise a notable influence on the course of events by serving as models for others to imitate. They may even become symbols entirely abstracted from the group and typifying for later generations the values for which it stood: such in historic and modern times are Henry V as delineated by Shakespeare; Joan of Arc as the protagonist of French national independence; Garibaldi as Italian patriot and archetype of republican; Emperor William I as the pattern of a moderate monarch remote from political brawls. But in so far as such leaders merely incarnate in peculiar degree values already generally or widely disseminated or form a link, although perhaps one of extraordinary dimensions, in the chain of established group activity they are to be distinguished from creative leaders.

Creative leadership emerges when a personality becomes the propulsive force for a value or complex of values or in certain circumstances for a systematic program, rallying about himself a group of men which on a small or a vast scale creates a stronger pressure than could emanate from any individual. The program may be directed toward material ends—economic, technical or political—or toward spiritual ends—religious, moral, humanitarian, artistic. But in any case this type of leadership diverges from representative leadership in that it involves an attempt to enrich or alter the existing stock of values in the possession of a society by gaining acceptance for an innovation freshly created by the leader or, if the innovation has been borrowed from another culture, by diffusing it in the new area. The path breakers of the early Italian Renaissance, Brunelleschi, Donatello and Masaccio, discovered the paramount importance in architecture, sculpture and painting of an eye satisfying proportion between the various components of a work of art. The German reformers developed the doctrine of justification by faith, which liberated the layman from the priest and gave him immediate access to a personal God. Defoe in *The Collective Body of the People* and Rousseau in his *Contrat social* introduced the concepts of demonstrative gatherings and of petition which offered to the individual voter previously unknown mechanisms for controlling Parliament even in the intervals between elections. Externally the strength of the dynamic leader is embodied in the followers who gather about him; his distinctive mark in contrast to other leaders is the creativeness of his work. It is the creative type to which the term leader in its more specific connotation applies.

The influence of the genuine leader as opposed to the merely representative leader is characterized not merely by its greater profundity and intensity but also by its radiation over a far wider sphere. Under his propulsive force the members of the group whom he activates may themselves become the material of leadership and develop into a class or stratum grasping and exercising the function of leadership over a constantly expanding body of men. This latter phenomenon is typical of the process of dynamic leadership in political relations, where the functions of leadership become magnified and therefore most easily analyzed. Here the formation of a group with the attendant establishment of certain values or the securing of certain interests within it does not constitute an end in itself, as in the case of leaders who organize a following about some economic, religious or cultural purpose outside the political arena; it is merely a stepping stone to the broader goal of creating or reorganizing a state.

Political theory until late in its development completely neglected the sociological phenomenon of leadership, taking no account of the existence of separate politically oriented groups within the state. The emergence of the state was explained as a process of union between merely two elements, the ruler and the people, the latter being considered as a homogeneous unit. The process according to such theories was essentially the same whether under primitive conditions, where the state was considered as supplanting a loose, unpolitical community, or among civilized peoples, where it was created from a grouping of tiny polities. The only question which absorbed the investigator in this period of political theory was whether a towering personality imposed himself by force upon the masses of the people or whether the people collectively appointed a ruler. David Hume in his *Essays, Moral and Political* (2 vols., London 1741–42) was the first to restate the whole problem in its modern form. He pointed out, first, that the processes conceived as alternative by the older theorists were in reality inseparable, for the towering personality could win submission to his rule only after he had demonstrated his

achievements in defense against the enemy, in the establishment of law and order or in the positive promotion of the public welfare. In other words, Hume introduced the thesis that submission is brought about in the first instance not by force but by "opinion" and "interest"; that is, by the conviction on the part of those submitting that such a course is advantageous. Above all, Hume was the first to stress the essential fact that the leader never gains the adherence of all the people simultaneously. The process begins with the voluntary submission of a limited group—warriors, priests, wealthy landowners—acting through opinion and interest; with these supporters the leader then subdues the others possibly and in the lower stages of political development regularly by brute force. A slow evolution involving many intermediate stages must be traversed before the masses adhere of their own choice on the basis of a conscious conviction of the benefits to be derived. "It is, therefore," says Hume, "on opinion only that government is founded; and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular. The soldan of Egypt, or the emperor of Rome, might drive his harmless subjects, like brute beasts, against their sentiments and inclination: but he must, at least, have led his *mamelukes* or prætorian bands, like men, by their opinion."

The process of reorganizing an already existing state is far more common and from the practical point of view more important than the creation of an entirely new state. As the first prerequisite of such reorganization the leader must develop a loyal and financially powerful body of supporters who, after he has furnished them with the indispensable equipment of a will to power, have the capacity to overcome the adherents of the existing government or, if the latter are suffering from ineffectiveness or lack of cohesion, to supplant them. The members of this first following are destined to constitute the leading class of the reorganized state, of which they are the nucleus. Once the reorganization has occurred, the abler among them function as legislative, administrative or judicial officials while the remainder crystallize into the ruling party—a social stratum unconditionally supporting the new system. Striking illustrations of this process are offered by the states which have directly or indirectly grown out of the World War; the separation of Poland and the Baltic countries from Russia and of Czechoslovakia from Austria, the piecing together of the fragments of the old Ottoman Empire into the new Turkish or Arabian state, show in each case the preliminary stage of group formation (nationalist parties) within the old imperial state and the subsequent emergence of the party leaders—Pilsudski, Masaryk, Mustafa Kemal, ibn-Saud—as the governing statesmen of the new national state and of their followers as the governing class. The most impressive examples are the evolution of Soviet Russia and of Fascist Italy. Mussolini in organizing his *fasci di combattimento* not only acted upon but developed the doctrine that the reconstruction of a state presupposes the existence of a trained hierarchy (*gerarchia*) to replace the nucleus of the old state.

The phenomenon of leadership in political relations offers a natural and convenient approach to the study of the psychological processes and social factors involved in the genesis of leadership in general. Recent students of political parties have in fact greatly enriched knowledge of this subject. The basic fact is that followers gather about the leader because they recognize in him a protagonist of values or interests which they hold dear. In all ages the most recurrent motivation of party formation has been the struggle for economic advantage. A military class may be rallied, as has repeatedly occurred in modern Spain, when a general issues a pronunciamiento promising that officers will be provided with governmental posts or parliamentary seats or, as in a more remote period, with colonial offices. The same motivation was at work in the creation of the modern Japanese constitutional state, to which the impoverished samurai gave their support in the expectation of economic rehabilitation, and in the Russian October revolution of 1917, which promised land to the peasants and control of the factories to the industrial proletariat. The laboring class supporting a leader who holds out the prospect of higher wages or cheaper food is driven by impulses basically similar to those which cause industrial magnates to assemble about a common banner in quest of protective tariffs. But under a Mohammed organizing the Arabs in the desert and under the leaders of the English Independents, who later became the central force of the Puritan revolution, the more common economic motif may be replaced by a spiritual or religious one; or the emphasis may be on ethical values, as in the case of Freemasonry as a movement for religious toleration and to some extent in the American abolitionist movement; again, the values may be intellectual, as with move-

ments for the promotion of national culture, such as the Flemish movement for school reform. On a still different level leadership may have as its immediate purpose the substitution of a progressive for an absolute and outgrown constitutional form. Or it may disregard or subordinate domestic problems to concentrate on aggrandizement in foreign affairs in the manner of Lord Beaconsfield toward the end of his life. Leaders repeatedly combine objectives from two or more of these categories: Daniel O'Connell and Charles Parnell gave the Irish movement, originally an agrarian protest against English absentee landlordism, its peculiar character by coupling it with Celtic nationalism and with Roman Catholicism; the French Revolution in addition to attacking the privileges of the aristocracy was a movement against Catholic orthodoxy and the influence of the church in appointments to public office.

The situation is further complicated by the interplay between political parties and independent non-political groups constructed within the state about some cultural, occupational or other interest. Such groups are likely to shift their weight from one party to another according to circumstances: thus the American farmers' organizations support with equal fervor the Republican party on one occasion and the Democratic party on another, and the German peasants' associations vacillate between conservatives and democrats. A close scrutiny of such groups leads to the conclusion that the social and psychological factors involved in the genesis of leadership are essentially the same in the case of a group built about a non-political interest as in the political party. The former may as a result of accident or change in leadership merge into the latter, as did the English trade unions.

The possible variations of the leader's position are infinite, if only because each case is individually shaped by the particular positive interest which is the basic motive impelling followers to gather. Even when the goal is set, the means which the leader may employ to consolidate his following are as diverse as the circumstances which condition them. The method of appeal depends fundamentally upon the leader's calculation of mass psychology in the particular environment in which he is operating. In some cases, if, for instance, those whom he wishes to recruit have arrived at a high stage of political maturity, he can rely on their comprehension of the idealistic social purpose which he is pursuing. In other cases he may be forced to subordinate his main purpose in his propaganda and to tempt followers by the prospect of incidental advantages, such as patronage or accession to the wealth of their predecessors in the old regime. Or he may enshroud his purpose in a veil of religious sentiment. The crucial test is whether or not he can arouse the faith of his followers in his personality, for only through such faith can he inculcate in them the power of endurance and the spirit of devotion to the common cause without which he cannot succeed. The traits of personality enabling the leader to impress a following vary with the program to be achieved and with the types which he addresses, but certain traits can be abstracted as generally effective in a particular situation or environment. In the Latin nations brilliance of bearing and command of propagandistic rhetoric may be the most valuable assets (as witness Bonaparte and Gambetta); among the Anglo-Saxons severe reserve and lucidity of argument (Cromwell, Marlborough, Wellington and Kitchener); among the Germans an intimate understanding of the people (Prince Eugene and Blücher). Irrespective of racial, national or situational peculiarities especial efficacy is always inherent in isolation, the maintenance of distance, marked simplicity and ascetic habits.

There are also certain external devices which the leader may employ in building a group: an apt epithet for the object of attack, such as "aristocrats" and "privileged classes" in the first phases of the French Revolution and "despotism"—a term often applied with amazing looseness—in all constitutional struggles; such slogans as "Italia unita e Roma capitale" in the Italian Risorgimento, "home rule" and "Sinn Fein" (independence) in the Irish struggle for freedom and the corresponding terms, "swaraj" and "swadeshi" in the contemporary Indian movement. The red shirt of the Garibaldians, the black shirt of the Fascists and the designation *Il Duce* (the leader par excellence), the cult of George Washington in America, all illustrate the use of symbols by promoters of movements to transmit to their followers a whole complex of associated values. Although they further the process of group formation, such devices lend themselves with great facility to demagogic abuses.

The pivotal problem in the study of leadership is the determination of what objective factors enable a leader to emerge and assemble a following. As the problem is often stated, is leadership ex-

plained by the personality and creative power of the leader or by the might of circumstance, by the fact that the need for innovation has reached such a degree of acuteness that the emergence of a leader becomes inevitable? Or according to the crude formulation is leadership a function of the hero or of the environment? It has already been implied that the question cannot be posed in these terms. Only when the two factors coincide—the acutely felt need for change and a personality adapted to the particular situation—can the process of group formation for the fulfilment of that need be set in motion. Attempts to lead in the absence of sufficient pressure for change, whether the absence be due to purely environmental factors or merely to the apathy, immaturity or unaggressiveness of the populace, which too are objective factors, have always either miscarried or been snuffed out after a few flickerings. This is the explanation for the failure of Vercingetorix to rally the Gauls against the Romans, of Cola di Rienzi in his attempt to overthrow the Roman oligarchy, of Babeuf in his drive for political communism toward the close of the French Revolution. On the other hand, even where the need is present and felt, it by no means follows that an individual with the necessary intelligence, energy, endurance and magnetism, the peculiar combination of traits and the exact orientation required will appear; still less that the material for a leading class will be at hand. Evils can exist and be recognized for decades or centuries without the emergence of a person to lead the reform. Even when the leader comes he must first give proof of his peculiar ability to carry out the appointed reform before the formation of a group can be actually achieved. Only in the course of the movement will it become apparent whether the alleged leader is cast in a different mold from the mere representative of authority or from the simple demagogue. Repeatedly it happens that the leader at hand—for example, the descendant of a monarch who has won a following through his pursuance of a social or national purpose—lacks the personal strength to remedy the evil, which must remain flagrant until an adequate individual arises; thus the attainment of Prussian hegemony in Germany was interrupted under William I, who in 1859 proved unequal to the conflict with Austria and the Prussian lower house, to be continued only with the emergence of Bismarck. Similarly a true leader may take up a task where it has been left shipwrecked by a demagogue, finding in the situation created by the latter the necessary foundation for his own success: thus Cromwell built upon the abortive work of the nobility who in 1628 had aroused the House of Commons to the importance of safeguarding the constitution.

Even where the initial success of the leader is independent of environmental factors, these operating through the following may radically affect the established leader and his program. Again the Fascist movement is peculiarly instructive. So long as it was in its incipient stages (1919–22), its leader directed it essentially in the interests of the middle class, whom the war had impoverished, aiming no less against international capitalism than against international socialism and clericalism. When, however, industrialists and financiers sent their sons and employees in multitudes into the storm battalions, Mussolini in the process of expanding the organization into a party had no other alternative than to proceed along capitalistic lines; he was henceforth financed by the capitalists and was forced upon an unwilling monarch as prime minister. Stated abstractly, an interaction had taken place between Mussolini and his environment, as the result of which his program had become modified. Established leaders as a rule are subject in greater or less degree to environmental influences: as their potential lines of penetration multiply, they are faced with the alternative of ineffective intransigence or compromise with the demands of their new adherents.

RICHARD SCHMIDT

See: SOCIAL PROCESS; COLLECTIVE BEHAVIOR; AUTHORITY; PERSONALITY; GENIUS; HERO WORSHIP; SYMBOLISM; AGITATION; DICTATORSHIP; REVOLUTION AND COUNTER-REVOLUTION; POWER, POLITICAL; CAPTAIN OF INDUSTRY; GROUP; CROWD; MOB; MASSES; INNOVATION; CHANGE, SOCIAL; CONTROL, SOCIAL.

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LEAGUE OF NATIONS. The League of Nations is the first attempt in history to furnish the international society of nations with a permanent and organic system of international political institutions. This attempt was an outcome of the World War. Before the war began, far seeing statesmen and writers on international affairs were predicting that some day such a system of institutions would be built up but they believed that centuries must elapse before their visions could be realized.

The impact of the World War upon the minds and consciences of men quickly changed their outlook. Indeed before the war actually began, while the tragic negotiations for its prevention were still under way, the British foreign secretary, Sir Edward Grey, declared that if Europe could be pulled through the crisis, it would be the duty of the statesmen of the world to try to create some international system by which such crises might in future be averted. Only a month later the British prime minister took up Sir Edward Grey's idea and declared that it was a war aim of the British people to create a league of peace at the close of hostilities. Two years later in 1916 Lord Robert Cecil wrote a memorandum which led to the creation of the Phillimore Committee, whose task was to draw up the first outline sketch of the international organization. Before the Phillimore report was completed, President Wilson laid down the war aims of the United States in his Fourteen Points, among which appeared the creation of the League of Nations. As the war drew to its close in the month of November, 1918, Lord Robert Cecil in his inaugural speech as chancellor of the University of Birmingham explained in detail the fundamental principles and obligations upon which he believed the League should be built up. He had drawn naturally enough upon the findings of the Phillimore report, and his speech was followed shortly after by General Smuts' well known paper to the cabinet in which he too sketched the framework of the League as he conceived it. At the same time Léon Bourgeois as president of a French government committee was preparing a similar scheme. Other governmental and private groups in many countries, both belligerent and neutral, were at work. There can be no doubt that the influence even of the private groups was great. The League to Enforce Peace in the United States, the League of Nations Society in Great Britain, Lord Bryce's committee and others produced proposals which secured a serious measure of public attention.

The primary preoccupation of the British and American statesmen who led the League of Nations movement and who finally brought the League into being was the question of how to keep the peace. The war in its effect upon the mind of the average citizen and the average soldier provided the political driving force which secured the establishment of the League. Moreover the experience of the war influenced the preparation of the League in still another respect. During the operations of 1915 to 1918 a number of Allied committees were set up to deal

with the control of shipping, raw materials, foodstuffs, fuel, munitions and the like. These committees and their secretariats developed in a considerable measure a new technique of international cooperation, which was continually in the minds of the practical politicians who drew up the Covenant of the League.

Yet although it is true that the League was born of the war, it is also true that in a considerable measure the nature of the international institutions created by the Covenant was determined by pre-war movements.

The first of these movements was the Concert of Europe. The Concert was taken by those who drafted the Covenant as the model for the Council of the League, which they believed would prove to be the real peace making agency in the League structure and the agency moreover which would control effectively the whole of its activity and work. The second movement was that which culminated in the two Hague conferences of 1899 and 1907. These conferences served as a pattern for the Assembly of the League, which it was expected would take over and develop the "legislative" function which the Hague conferences had begun to use. The third movement was that of the so-called Technical Unions, of which the Postal Union was the earliest and the most successful example (*see* INTERNATIONAL ORGANIZATION).

Thus the pre-war experience of these three international movements was combined with the war experience of the authors of the Covenant in the shaping of the institutions which the Covenant set up. It must be added, however, that the statesmen of 1919 realized very clearly that these pre-war movements had been but inadequate attempts to meet the pressing needs of a changing world (*see* INTERNATIONALISM). They perceived that the enterprise of creating permanent international political institutions could be rationally based only upon a consciously accepted conception of an international society. They understood—and the statesmen who have worked under the Covenant have come more and more consciously to accept the same point of view—that such a society requires international institutions, founded upon an international constitution, providing for the members of the society rules of law to guide their relations with each other: institutions to declare these rules laws, to interpret them, to change and mold and complete them as the requirements of a changing and growing society may require.

The Covenant of the League of Nations is the "written constitution" of the international society of states. It is always so treated and is openly spoken of as such in the debates of the government lawyers in the First [Legal] Committee of the Assembly. It contains the constitutional provisions by which the international institutions of the League were created, the provisions by which their powers are defined and the fundamental rules which the members of the League undertake to observe in their mutual relations. Around it has grown up in recent years a great new body of "constitutional" international law. The mandates treaties, the minority protection treaties, the Statute of the Permanent Court of International Justice, the Optional Clause attached to that statute, the General Act for the Pacific Settlement of International Disputes, even the Pact of Paris, are international law-making conventions whose legal character like that of the Covenant itself is in the strictest sense of the word constitutional.

The body of international constitutional law is being further increased by resolutions of the Assembly. Some classes of resolutions—those, for example, which create new international institutions attached to or working with the League —are definitely legislative in their nature. It may perhaps be added that in the procedure of the Assembly, the Council and the other organs of the League, based as it is upon a written code and developed year by year by general practise, another branch of constitutional law is being developed.

The character of the Covenant as the constitution of the international society of states proves that the League was intended to be universal. And in practise despite the fact that certain great states are not members all its work is conducted on the assumption that it is entitled to act for international society as a whole and that the rules which it adopts must be appropriate for universal acceptance.

The whole strength of the League, particularly at moments of international crisis, has been gravely impaired by the fact that the United States and Soviet Russia are not members. It has been further impaired by the fact that Brazil and Costa Rica have formally resigned membership and that Argentina has been temporarily suspended. The very right of resignation is, although politically necessary in the early stages, in reality inconsistent with the character of the League as the permanent political framework of an organized society of states. The membership of the dominions of the British Com-

monwealth has sometimes been the object of criticism. Such criticism, except perhaps in so far as it regards India, is ill informed. Those who know the reality of the governmental freedom of the British dominions know that they are as truly "independent States" as very many of the other members of the League.

The main organs of the League are the Assembly, the Council, the Secretariat, the Permanent Court of International Justice (*q.v.*) and the International Labor Organization (*q.v.*). In addition there are a number of subsidiary organs created by Assembly resolution and now firmly established as a permanent part of the machinery of the League. Such, for example, are the Communications and Transit Organization with its tri-annual conference and its standing Advisory Technical Committee served by the Communications and Transit Section of the Secretariat; the Health Organization with its periodical conferences and its standing committee and subcommittees; the Economic and Financial Organization with its periodical conferences and its permanent Economic Committee and Financial Committee; the Permanent Mandates Commission established by the Council in pursuance of article 22 of the Covenant; the Advisory Committee on Traffic in Opium, the Committee on Traffic in Women and Children and the Committee for the Protection and Welfare of Children and Young People grouped together under the heading of the "social and humanitarian" activities of the League. In addition there are a great number of temporary ad hoc committees established to study and report upon certain subjects, as, for example, the Preparatory Commission for the Disarmament Conference and the Slavery Committee.

All these organs form an integral part of a single coherent system of institutions. No one of them could effectively accomplish the tasks with which it is entrusted if it were cut off or separated from the rest. Their activities are coordinated and—with the exception of the Labor Organization—controlled and directed by the Assembly.

The Assembly consists of representatives of all the members of the League. The Covenant states that each member "may have not more than three Representatives," but in fact the Assembly itself has interpreted this provision so broadly that the number of active delegates which represent any country in the Assembly and its committees may greatly exceed the allotted three. It was expected by the authors of the Covenant that the Assembly would be a cumbersome "diplomatic" body; that it would be difficult for it to make decisions; that its very size and the slowness of its action would militate against its authority. They hoped that it would develop the legislative functions which the Hague conferences had attempted to fulfil. But so relatively unimportant did they consider these functions that they debated at length whether they should insert a provision that the Assembly should meet "at least once in four years." In other words, they expected that the real power and authority of the League would lie not in the Assembly but in the Council, which they regarded as the organ that would group the great powers.

All these previsions have been falsified by experience. The Assembly has become the supreme organ in the system of the League. It is universally recognized that the sovereign power of the League lies in its hands. It has indeed developed legislative functions as the authors of the Covenant hoped; it has drawn up a whole series of most important international conventions; it has legislated by resolution. But it has also become the controlling and the initiating agent in every department of the work of the League. The Assembly has achieved this position of supremacy because it has become a parliamentary body. Its composition and work bear hardly a trace of the old diplomatic conferences of the past. Its code of procedure was drawn up at the first meeting by the president, Paul Hymans, foreign minister of Belgium; Viviani, ex-prime minister of France; Lord Robert Cecil and Sir Arthur Balfour, cabinet ministers of Great Britain; and Newton W. Rowell, lord president of the Council in the government of Canada. These distinguished parliamentarians made rules for its working which insured that in all respects it should function as an international parliament, and in the years which have followed the Assembly has been successful in exact proportion to its management by parliamentarians in accordance with parliamentary practise.

The idea that it should meet only at long intervals of time has likewise disappeared. Like other government institutions the League must have a budget; as in every parliamentary country the League budget must be voted every year. Since only the Assembly representing the sovereign will of all the members of the League could draw up the budget, the Assembly must necessarily meet at least once in each year. In

fact it has not only met every year in the month of September, but there have also been two special assemblies, one in March, 1926, for the admission of Germany, another in March, 1932, to deal with the Manchurian dispute between China and Japan.

The plenary meetings of the Assembly consist of all members of the various delegations. In these plenary meetings the general work of the League during the year is debated; elections (to the presidency, vice presidencies, to the General Committee of the Assembly, to membership in the Council, to judgeships of the Permanent Court) are held; the Assembly committees are established and reports from these committees received. Under the standing rules of procedure six committees are appointed, each consisting of a representative of every member of the League. These committees all meet in public and each of them deals every year with certain special subjects: the first committee with legal questions; the second with technical questions, such as health, economics, finance, transit; the third with disarmament, security, arbitration and allied matters; the fourth with the budget of the League; the fifth with social and humanitarian activities; the sixth with political questions. It is the general practise of delegations to send to these committees representatives with special knowledge of the matters with which they are to deal. It thus happens that over a period of years the committees have achieved a high degree of expert knowledge and the debates of the matters submitted for their consideration have often been on the highest level.

The Assembly begins each yearly session with a general debate in which the international situation and the work of the Council, the Secretariat and the subsidiary League organizations are reviewed. Questions arising out of this current work and all proposals made by governments to the Assembly are then referred to the six committees; the committees debate them in detail and draw up reports, setting forth their conclusions or recommendations for further action. These reports then come before the full Assembly. As a rule they are accepted almost without discussion, unless for some special reason debate is thought to be required. This procedure promotes speed and efficiency in dealing with the general work of the Assembly, while maintaining safeguards in case the committees' work is unsatisfactory.

It is in the Assembly that the power of the small nations has made itself felt. It was expected by the authors of the Covenant that leadership and control would remain in the hands of the great powers. In many ways they have, but it is also true that small powers have played a great part in the development of the League through the leadership in the Assembly of such men as Fridtjof Nansen of Norway, Hjalmar Branting of Sweden, Edouard Beneš of Czechoslovakia, E. K. Venizelos and Nicolas Politis of Greece, Louis de Brouckère of Belgium and other distinguished parliamentarians.

The Council is the executive organ of the League. In fact its functions can be described as "executive" only by analogy, since the action which follows from its decisions is for the most part taken not directly by its own agents but indirectly by the governments of whose representatives it is composed. The Council fulfils nevertheless the duties analogous to those which within a national government are entrusted to the cabinet or other responsible ministers. It directs the work of the Secretariat. It makes all decisions concerning the appointment of committees, the summoning of conferences and the like. It receives reports from the subsidiary organs of the League and decides whether or not these reports shall be transmitted to the Assembly. It deals with disputes between members of the League. Indeed it is to the Council that the Covenant entrusts the primary duty of safeguarding the peace of the world. Under the Covenant and other treaties it is specially delegated to supervise and secure the faithful observance of the Mandates and of the Protection of Minority Treaties and Declarations of which the League is the guardian.

When the Covenant was drawn up, the great powers endeavored to confine representation on the Council to themselves only. When they were defeated in this attempt they sought to secure at least a permanent majority of its members. This plan too broke down because of the abstention of the United States, which upset the numbers. Finally the whole conception was abandoned under the pressure of the smaller countries to increase the number of their non-permanent seats. In 1926 a special committee of the Assembly decided that the number of non-permanent members should be increased to nine, although the great powers, who have permanent seats, number only five. This desire of the small powers to be members of the Council springs from two motives. The first is undoubtedly the great prestige which now attaches to the Council. The second is the desire to exercise

the power of veto in cases of international dispute which article 15 of the Covenant confers upon members of the Council.

The Council like any other committee works well when it is well led. But because its tasks are new and constructive and since there is no past experience to guide it beyond that which it has itself built up, it must depend more than most national cabinets upon the leadership of the wisest and the most powerful of its members. Experience has shown that one or two men, acting with a clear vision of what they desire to achieve and with the courage to accept great responsibilities both toward their own nation and the world at large, have been able to transform it into a most effective body. Lord Cecil in 1923, Briand and Stresemann from 1926 to 1928, Henderson and Briand from 1929 to 1931, showed that the Council could be made an organ of high authority in world affairs.

Like the staff of the International Labor Office and of the Registry of the Permanent Court of International Justice the Secretariat of the League constitutes a true international civil service. In 1930 the Secretariat was placed under the rules of a permanent statute which gives its members long term contracts, security of tenure, prospect of promotion and pensions, thus offering them the material basis of independence from pressure by their respective national governments. From its inception the Secretariat has been organized as a single common international service. Every individual section is set up on this same international basis. The members of the Secretariat have been chosen by the secretary general for their personal merits or suitability for their tasks. In building up his staff the secretary general has naturally been obliged to seek, so far as may be, to secure a balance of nationalities, in order that the Secretariat like the Assembly and the Council might be representative of the world at large. The members of the Secretariat are, however, in no sense delegates of their national governments but are responsible to the League alone.

The authors of the Covenant purposely left as elastic as possible the constitution of the new institutions which they created. They believed that it would be unwise to lay down rigid rules for future situations which they could not foresee, and that it was better to leave wide discretion to the statesmen who would build up the customs and the traditions of the League.

Experience has shown that they were right. At certain moments of crisis a more rigid constitution might have been of assistance to those who have sought to uphold the principles of the League. But, broadly speaking, it has proved advantageous to leave the statesmen free to build up constitutional practise as the circumstances of varying cases might require.

In many ways the institutions have worked much more smoothly than was expected. There has never been, for example, any open opposition or clash of interests between the great powers and the smaller states, with the possible exception of the events in the special Assembly on the Sino-Japanese dispute in March, 1932.

Nor have the rules of unanimity and equality of vote given rise to the difficulties which were expected. In the work of Assembly committees decisions are in fact taken by majority vote; and since the full Assembly almost automatically adopts whatever the Assembly committees draw up, the actual decisions on League policy are thus in many matters made by majority vote. No tendency to use the power of veto to obstruct decisions has been shown, at least in public sessions of the Assembly and the Council. In secret sessions, however, difficulties have sometimes arisen; and of course the right of veto legally continues.

Similarly the Assembly and the Council have not encountered serious obstacles in carrying through their functions of election. It is true that elections to the Council and even the last election to the Court gave rise to canvassing on a scale which some critics consider dangerous. Broadly speaking, however, the elections have been carried through, whether for the presidency or other offices of the Assembly, for the non-permanent membership of the Council or for the judges of the Court, with due regard to the necessity for choosing the most suitable candidates.

It was further anticipated when the League began that the preparation of the annual budget would cause great difficulty. Such has not been the case. Many difficulties are avoided by the fact that the budget is subjected to a closer and more effective scrutiny and control than that exercised over the expenditure of any other public money in the world. The estimates of the secretary general are first examined and passed by a supervisory commission, which submits them with a report to the fourth committee of the Assembly, which devotes weeks to their most careful examination. But there has never been any practical difficulty in settling the purposes for which expenditure should be allowed or in

settling the allocation of that expenditure or its repartition among the different members or even (with the exception of a few minor instances) in securing payment of subscriptions by members of the League.

Both in the Assembly and in the Council the practise of holding meetings in public has been of great importance. It has been an almost unvarying rule that public debates have led to better results than private meetings. A well known example is that of a heated dispute in 1927 between Germany and France concerning the territory of the Saar. After a week of private negotiations Briand and Stresemann reported to the Council that they had been unable to reach a solution. In the course of the public debate which followed this report a solution satisfactory to both parties was found and adopted. This introduction of the method of dealing with international business by means of public debate is in reality nothing but the application of the principles of democratic government to the relations between peoples.

As has already been stated, the fundamental purpose of the League of Nations is to organize the international society of states; to create a comprehensive system of law to control all the relations of the members of that society; to provide institutions by which that law can be interpreted, applied and developed and by which administrative action for the promotion of common international interests can be taken. Translated into terms of immediate policy in 1919 this meant that the League was intended by its authors to do three things: first, to keep the peace and settle by pacific means international disputes which might arise; second, to remove the causes of war; third, to organize international cooperation in all spheres of human activity where there were common international interests to be served. These three functions may be considered in turn.

The Assembly, the Council and the Permanent Court of International Justice are all charged with duties for the maintenance of peace and the settlement of disputes. The constitutional law which they apply consists of the Covenant, the Optional Clause, the General Act, the Locarno Treaty, the Kellogg Pact, bilateral arbitration treaties between states and the clauses for compulsory arbitration contained in a large number of general conventions.

The political and judicial organs of the League are in a very real and important sense independent of each other. There has never been any suggestion that the Assembly or the Council should or could directly or indirectly exercise the slightest political influence over the legal verdicts which the Permanent Court should give. But these organs remain none the less parts of a single and coherent system; and on many occasions they have acted together for the solution of international disputes, the Council handing over to the Permanent Court for advice or decision legal questions with which it was unable to deal. Such constitutional connection and collaboration have been of unquestionable value.

For the most part the constitutional law which has been applied in the settlement of disputes has consisted of the rules of the Covenant. The compulsory jurisdiction of the court under the Optional Clause has been exercised only on one or two comparatively unimportant occasions. The provisions of the General Act have not yet been brought into play. The application of the Pact of Paris has arisen only in connection with the Manchurian dispute.

In application of the Covenant the Permanent Court has up to July, 1932, dealt with forty-eight international disputes. The Council has dealt with more than thirty. In regard to a great proportion of these disputes both the Court and the Council have had a generous measure of success. Except for its decision concerning the Austro-German Customs Union in August, 1931, the work of the Court has been almost free from general criticism. Similarly in most of the disputes with which it has had to deal the Council of the League has been able to secure concrete settlements which in the great majority of cases have meant that the subject of the dispute has wholly ceased to trouble the nations concerned.

It must be noted moreover that in a number of these cases great difficulties were encountered. In four of them hostilities between the parties had actually begun and had to be arrested. Some of the most difficult involved great powers. Examples which may be cited are the Upper Silesian dispute between Germany, Poland and the Allies in 1921, the Upper Silesian minority dispute between Germany and Poland in 1931, the Memel dispute between Lithuania and Memel in 1923, the Mosul dispute between Great Britain and Turkey in 1924, the Austro-German Customs Union dispute between Germany and France and its allies in 1931. Generally, however, the League as a peace keeping organism is judged by its treatment of two dis-

putes, that between Italy and Greece in 1923 concerning the occupation of Corfu and that between China and Japan in 1931 concerning the Japanese occupation of Manchuria. It would be difficult to claim that in the Corfu dispute the League was completely successful. It is fair to say, however, that the difficulties of the League were greatly increased by the fact that the Greek government submitted the dispute simultaneously both to the Council of the League and to the Conference of Ambassadors in Paris and that it undertook to accept the arbitral decision which either of them might make. In consequence Italy refused the jurisdiction of the League and claimed that the ambassadors should decide. Thus the Council could do no more than propose the terms which it would regard as just. But there can be no doubt that it was the pressure of the Council and of the Assembly of the League which was decisive in securing the restoration of Corfu to Greece.

It is still more difficult to estimate the work of the League in connection with the Manchurian dispute, since that work is not yet ended. It may be said, however, that in a particularly difficult case the League gave Chinese leaders a platform whereby they might appeal to the world; that in the Special Assembly of March, 1932, it demonstrated a great body of world opinion which stood for the collective maintenance of international law; and that at least it firmly upheld the principle that in international disputes of whatever kind third party intervention shall be accepted and impartial inquiry carried through by League of Nations' investigators on the spot.

The Manchurian dispute in particular has brought forward the question of sanctions, which is one of the most important problems the League must face. The non-sanction school holds that the League should use only moral pressure against violators of the peace of the world; to seek to prevent war by waging war seems to it a contradiction in terms. The powers holding this view are unwilling to commit themselves to a use of their armed forces, particularly in view of what they call the difficulty of determining the aggressor. The other school considers that article 16 of the Covenant has already committed members of the League to the use of economic and ultimately military sanctions against recalcitrant states. This school believes that the League will not ultimately be able to preserve world peace unless it is given power to restrain disloyal aggression in violation of international law. No attempt has as yet been made to apply sanctions whether military or economic, but economic sanctions were successfully threatened against Jugoslavia in 1921.

By the second function which they hoped that the League would fulfil, namely, the removal of the causes of war, the authors of the Covenant meant the ending of annexation by conquest, of "colonial expansion," of secret alliances for war and of inflated and competitive armaments. Conquest is covered and explicitly prohibited by article 10 of the Covenant, the future efficacy of which is bound up with the ultimate result of the Manchurian dispute. Colonial expansion is dealt with by the adoption of the mandates system (*see* MANDATES).

Secret treaties are forbidden by the terms of article 18 of the Covenant, which stipulates that every international engagement of whatever kind must be registered and published by the League before it is binding upon the parties. Many hundreds of treaties have been so registered and published, and as a result the old system of secret military engagements undertaken without the knowledge of the peoples is no longer possible. It is indeed true that the system of military alliances still persists. But it has not the same sinister significance that it had when it was both the legal right and the regular practise of governments to undertake commitments to make war without the knowledge of the peoples on whose behalf those commitments were made.

The problem of armaments remains at the moment of writing unresolved. The Covenant imposes on members of the League the obligation to make an international treaty to reduce their armaments to the lowest level consistent with national safety and the enforcement by common action of international obligations. For twelve years that obligation has remained unfulfilled. But throughout this period preparations for its fulfilment have been going on, and in February, 1932, these preparations led to the meeting of the Disarmament Conference. In the first six months of its existence the conference made substantial progress—progress reflected in the general movement of popular ideas and in President Hoover's bold proposal that existing armaments be reduced by approximately one third.

The third function of the League is to promote international cooperation in all domains where nations have common interests. The au-

thors of the Covenant held that peace was not mere abstention from war but must mean close and active collaboration of many kinds. In this department the League has certainly attained a development and achieved a success which the authors of the Covenant could hardly have expected. The Health Organization, the Communications and Transit Organization, the Social and Humanitarian Section, have all drawn up new conventions and brought about administrative collaboration between governments which holds promise of great progress in times to come. In the economic and financial spheres much has been accomplished. Apart from the financial reconstruction schemes carried through in Austria, Hungary, Bulgaria and Greece and apart from the remarkable settlement of refugees in the latter country the League committees have already done much to bring governments and peoples to face the necessity for conscious control of the world economic and financial machine.

The Economic Conference of 1927 did not produce great immediate practical results, but it spread the germs of a revolution in ideas concerning international trade, particularly with regard to protective tariffs, while the subsequent work of the Financial Committee on the Study of the Gold Standard upon this problem and other allied questions laid a foundation for the work of the World Economic Conference.

In summary it may be said that through the technical and social organizations of the League a new body of international law is being built up in many domains of fundamental importance and that a new technique of administrative cooperation between governments is being worked out. Important concrete results have already been achieved and wide vistas of future progress are being opened. A world public health inspectorate, a world organ for the control or supervision of international lending to governments, are examples of schemes which may become practical politics within the lifetime of the present generation.

In its early days it was often alleged against the League of Nations that it was only "the policeman of the Peace Treaties." The allegation is true only in so far as the League is an organism for preventing violent attack against arrangements established by recognized international law. Legally it "stabilizes the status quo" no more than it was "stabilized" by the international treaties of pre-war days. On the contrary, the League itself provides the first machinery in history for securing change by peaceful means in existing law or in treaties which have become unjust or inapplicable.

The fundamental problem of securing change by peaceful means in existing international arrangements is that of providing a sense of security from war. Can such a sense of security be hoped for? How far does it now exist? What are the prospects that it will be increased? The answers to these questions must for the near future at least depend upon the solution given to the Manchurian dispute and to the armament problem. If in these two questions the League were to fail or if it were to adopt solutions so inadequate as to destroy confidence in its efficiency as an agent of justice or as a guaranty against war, the prospect of creating a true sense of security would be small.

The establishment of a sense of security, of a belief in the League as the authorized agent of justice and as a certain guaranty against war, must depend in the last resort on its success in developing the political and legal organization of international society discussed above. In this process considerable progress has undoubtedly been made. Constant contact between responsible ministers of state in the institutions of the League has revolutionized the whole conduct of international affairs. International law is being improved and completed. In meetings of the Assembly and the Council a sense of collective responsibility for world peace and for the maintenance of world law is being evolved. The "juristic conscience" of which international lawyers used to speak has become a real and vital factor.

Some progress has also been made toward the acceptance of the fundamental conception of an organized international community; namely, that the vital interests of nations are not in conflict but that, on the contrary, they are common interests which they share. A consciousness of the overriding collective interest of the international society of states is beginning to evolve. The change in this regard is still limited and tentative; nations have not yet definitely accepted the view that their supreme common interest is to maintain the public peace and uphold the public law and that they must therefore be ready to make sacrifices for the common good. Fundamentally the future of the League must depend upon the ideas and beliefs which the citizens of the world accept. The issues of its survival and of its strength are still in doubt, but the experience of its twelve years of

operation proves at least that the experiment has not yet failed.

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See: INTERNATIONAL ORGANIZATION; INTERNATIONALISM; INTERNATIONAL LEGISLATION; INTERNATIONAL LAW; INTERNATIONAL LABOR ORGANIZATION; PERMANENT COURT OF INTERNATIONAL JUSTICE; WORLD WAR; OUTLAWRY OF WAR; PEACE MOVEMENTS; DISARMAMENT; LIMITATION OF ARMAMENTS; MANDATES; MINORITIES, NATIONAL; REPARATIONS; MONETARY STABILIZATION; GREAT POWERS; SOVEREIGNTY; DIPLOMACY.

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LEARNED SOCIETIES. As commonly employed the term learned society, like university, academy and institute, has no very precise meaning. Construed strictly it denotes an association or organization of scholars, whether working in varied fields or devoted to some particular subject or discipline. The term, however, is distinctly modern; and by the time it had come into use many if not most organizations of scholars had been broadened to include persons who although fitted by interest and aptitude to be valuable supporting members had themselves no claim to be regarded as scholars. There are today, particularly in America, few so-called learned societies other than of this semipopular type; and while the present article excludes from consideration organizations in which the scholarly element—even though supplying the leadership and impetus—is more or less completely submerged in a mass membership of a popular or professional character, the organizations that remain under the rubric learned are in the great majority societies in which scholars and intelligent laymen are intermingled. This article also excludes from consideration educational institutions, research institutes and bureaus and groups of scholars and writers associated principally in carrying on a periodical, such as the *Année sociologique* in Paris. On the other hand, it includes academies.

The antecedents of modern learned societies are indeed to be found in the development of academies, of which the earliest is represented by the group of scholars who gathered at the museum of Alexandria, founded at the beginning of the third century B.C. by the first of the Ptolemies, and devoted attention impartially to all branches of learning then known. Later came the academies founded by the Moors at Granada, Cordova and Samarkand and notably the academy over which Alcuin presided as a branch of the School of the Palace established by Charlemagne in 782. All of these were short lived; and further important developments are not discerned until the beginnings of modern times, when organized groups of litterateurs and scholars assumed a major role in the revival of classical learning, the creation of the new vernacular literatures and the stimulation of scientific inquiry. Italy proved an especially fertile field; and one recalls not only the Accademia Pontaniana—to employ its later name—founded at Naples in 1433 by Antonio Beccadelli but the more famous Accademia Platonica, established about 1474 by Lorenzo de' Medici, which although lasting but half a century became a model for similar organizations both in Italy and elsewhere.

From the later sixteenth century onward academies multiplied throughout all Europe except in the Balkan areas. In Italy the literary Accademia della Crusca dated from 1582; the scientific Accademia dei Lincei, with Galileo as one of its earlier members, from 1603; the short lived scientific Accademia del Cimento of Florence from 1657 and the Reale Accademia delle Scienze from 1757. In France the Académie Française first took form under royal patronage in 1635; the Académie des Inscrip-

tions et Belles-Lettres arose as an offshoot from it in 1663; the Académie des Sciences received official status in 1666; and a long list of local academies and societies—at Lyons, Caen, Bordeaux, Montpellier, Pau, Dijon, Rouen, Amiens, Nancy, to mention only a few—sprang into existence between 1700 and 1760. By act of the Convention all prominent organizations of this kind in France were suppressed in 1793. Two years later, however, the same body decided to found an Institut National; and one by one the previous great national academies were reconstituted in the earlier years of the nineteenth century as branches of the Institut. In this form and under their old names all exist today; and the history of modern French learning, science and literature is largely a story of their activities. In Germany a Societas Regia Scientiarum created in 1700 under a plan prepared by Leibniz was reorganized on the French model under Frederick II and received its present constitution in 1812. In Russia the Académie Impériale des Sciences de Saint-Petersbourg was planned by Peter the Great but actually established by Catherine I in 1725. In England James I sponsored a scheme of Edmund Bolton for a royal academy in 1616 or 1617, but the resulting Royal Society did not receive its charter until 1662. This body was devoted almost exclusively to natural science; a British Academy for the Promotion of Historical, Philosophical, and Philological Studies was chartered in 1902.

Although varying widely at many points European academies have in modern times presented certain general characteristics. They have started as or developed into corporate bodies composed of a limited (frequently a distinctly small) number of persons, mainly or exclusively scholars; they have usually sought to occupy a widely comprehensive domain of intellectual activity, e.g. all natural science or belles-lettres or archaeology and history or fine arts; an inevitable tendency to differentiation of interests has commonly led to reorganization in branches or sections or to the emergence of offshoots as new academies; in nearly all cases there has been some form of public and official recognition, most academies having been founded, endowed, subsidized or in other ways patronized by the sovereign of the state in which they were located; and, finally, academies have been typical of an aristocratic age in the sense not only that higher learning and creative scholarship were as always the possession of the few but in the sense also that the social interests and associations of scholars were commonly bound up with those of the well to do and influential elements of the community.

In an era which has witnessed the steady democratization of learning the old style academy has inevitably declined. Socially it has to a considerable extent been supplanted by the modern club; intellectually it has tended to give way to learned societies devoted, as the academy commonly was not, to precisely defined and often narrowly circumscribed areas or divisions of knowledge. Academies have by no means disappeared; and some without giving up their earlier names and positions have adapted themselves to changing conditions and taken on the characteristics of semipopular learned societies. Many of the number, however, are now mainly of historical interest and make but scant direct contribution to the advancement of knowledge either by research or by publication. Even in the eighteenth century academies as a group were less vigorous and productive than in the seventeenth. Their social, moral and religious roles were important, but most major intellectual labor was performed by investigators and scholars working quite independently of them.

Learned societies of present day Europe date mainly from the second half of the nineteenth century or later; and their great number is accounted for principally by steadily advancing specialization in learning, the rise and development of multifold departments and phases of social science, the growth of the teaching profession, which furnishes a steadily widening constituency, and the abandonment of royal and aristocratic connections which had operated to stabilize and restrict the older academies. Brief mention can be made of the trend of development in only a few countries and in the domain of the social sciences alone.

In England the social sciences did not become subjects of instruction in the universities until very recently—in most cases not until after 1885 or even 1900. That they did so at all was due principally to pressure applied by various nineteenth century societies founded to advance the scholarly and professional interests of their members. The Statistical Society of London, founded in 1834, was until late in the century one of the few learned organizations that furnished opportunities for specialists to meet and discuss their common labors and problems. A National Association for the Promotion of Social Science, established in 1857 and including among its members numerous members of Parliament,

labored for a generation to inculcate an appreciation of the significance of social science and through the several sections into which it was divided gave social studies the bent toward close working relationships with practical affairs which has remained a prominent feature of English learned societies to this day. Some societies, such as the Political Economy Club founded by Tooke in 1821, never advanced beyond the stage of discussion groups. But a Royal Historical Society formed in 1868 although at the outset composed mainly of amateurs attained the character of a permanent association dominated by scholars; a Royal Economic Society dating from 1890 developed along similar lines; and important services have been rendered by such other organizations as the Anthropological Section of the British Association (1884), the Society of Comparative Legislation (1894) and the Sociological Society (1903). Various more recent societies, for example, the Historical Association (1906), the Association of Teachers of Economics (1925) and the Economic History Society (1926), are composed mainly of teachers but are concerned with the encouragement of scholarly work as well as with the promotion of the interests of their subjects in the schools and universities.

Continental Europe has broken with the academy type of scholarly organization less completely than has Great Britain and, speaking broadly, the shift has been rather more in the direction of research, publishing and even teaching institutes than in that of national or regional learned societies after the British and American pattern. In France a Société d'Ethnographie dates from 1859, a Société de Législation Comparée from ten years later and a Société des Études Législatives from 1901. But various societies in economics, such as the Société d'Économie Politique (1842) and the Société de Statistique at Paris (1860), are insufficiently free from political bias to be regarded as genuinely scientific organizations; and the École Libre des Sciences Politiques (1871) and various other *écoles* are primarily teaching and publishing institutions. Germany abounds in academies of sciences, which among other activities have done a great deal of historical research, and in more recent research institutes, such as that at Kiel established by Professor Harms and his associates for the study of problems of international economic relationships. This has not, however, prevented the rise of several genuine learned societies of national scope, notably the Verein für Sozialpolitik (1872), possibly to be regarded as the most important organization of its kind in the world, and the more recent Deutsche Gesellschaft für Soziologie (1909). Mention should also be made of the Görres-Gesellschaft (1876), which although organized to promote a Roman Catholic orientation has attained a high rank by the quality of its publications in social science and history. The Friedrich List Gesellschaft (1925) established by Professor Harms has also attained high standing not only as a learned society but as an agency of collaboration between scholars and men of affairs.

To numerous academies inherited from earlier days Fascist Italy has added an Istituto Nazionale Fascista di Cultura and several research institutes and bureaus, linked up with the government on the theory that social science ought to be at the service of the state; and Soviet Russia has developed a vast congeries of institutes and learned societies as branches of a Communist Academy created in 1918. In both of these countries the tendency toward specialized, semi-governmental research institutes is so pronounced that learned societies of more general scope find less opportunity for growth than in other lands, although it may be noted that under a new charter obtained in 1927 the old Academy of Sciences at Leningrad no longer confines itself to history but devotes attention to the entire range of the social sciences.

In the United States the history of learned societies starts with the founding of the American Philosophical Society at Philadelphia by Benjamin Franklin in 1727, an organization which in true eighteenth century fashion took all learning for its province and after more than two hundred years still numbers among its members men of widely diverse intellectual interests. An American Academy of Arts and Sciences established at Boston in 1780, an Academy of Natural Sciences founded at Philadelphia in 1812, an American Antiquarian Society formed also in 1812, an American Statistical Association established in 1839, an Association of American Geologists created in 1840 and broadened in 1848 into the present American Association for the Advancement of Science, an American Oriental Society established in 1842, an American Geographical Society dating from 1852, an American Philological Association from 1869 and a National Academy of Sciences chartered by Congress in 1863 practically complete the list of learned bodies (apart from college faculties) established prior to the last quarter of the nineteenth century. The majority were devoted

primarily—in several instances, exclusively—to the interests of the natural sciences; and at least half were definitely or in effect localized in Philadelphia, New York, Boston or Washington.

Most of the learned societies as they exist today were created after the year 1875. Between that year and 1900 increasing specialization in learning together with the rapid growth of personnel engaged in advanced teaching and research gave rise to a long list of nation wide learned societies, representing not only the principal branches of natural science but also humanistic and social studies which with some impetus from an American Social Science Association (to give it its present name) organized at Boston in 1865, were now for the first time winning recognition and standing as separate disciplines. In the list belong, on the one hand, the American Chemical Society (1876), the American Physiological Society (1887), the Geological Society of America (1888), the American Psychological Association (1892), the Botanical Society of America (1893), the American Physical Society and the Astronomical and Astrophysical Society of America (1899) and shortly afterward the American Society of Zoölogists (1902) and the Association of American Geographers (1904); and, on the other hand, the Archaeological Institute of America (1879), the Academy of Political Science in the City of New York (1880), the Modern Language Association of America (1883), the American Historical Association (1884) and the American Economic Association (1885). Since 1900 the multiplication of societies has gone steadily forward—partly on geographical lines through the development of local or regional organizations, partly on functional lines through the establishment of original societies in virgin fields or more frequently through the splitting off from older societies of groups of persons interested in specialized work in more limited domains. To cite a single illustration of the latter process: members of the American Historical Association specially interested in government and international affairs assembled in 1904 in a new American Political Science Association; groups of specialists from the latter in turn formed an American Society of International Law in 1906, a Governmental Research Conference in 1915 and a number of other subsidiary but independent societies reflecting particular emphases or interests.

A few of the older American societies, for example, the Academy of Arts and Sciences, resemble the typical European academy in having a closed membership composed of scholars concerned with a wide variety of subjects. The great majority, however, are of the familiar twentieth century sort having to do with a single more or less narrowly delimited field of knowledge, welcoming to membership not only scholars but any other persons having sufficient interest to join and thus combining with an active professional membership, which manages and carries on the activities, a passive lay membership (often larger), whose participation is commonly limited to paying dues, receiving publications and perhaps occasionally attending meetings. As a rule the active professional membership whatever its proportions consists chiefly of college and university teachers in the given field. In the typical case officers are elected anew at each annual meeting; a governing council or board is in part renewed each year; standing and special committees are constituted as required; and funds are obtained principally from annual dues, although a few societies have received modest bequests and some have been given grants for special purposes by one or more of the educational foundations.

Learned societies of the types most commonly found in the United States owe their impetus to the desire of scholars and teachers in particular fields to come together for exchange of ideas and experience and to carry on publishing and other cooperative undertakings of mutual benefit. In these and other ways they correlate and cross fertilize scholarly activity in nearly every branch of learning and promote morale among the workers. Few societies as such engage in research on any systematic and comprehensive lines. Funds are lacking; research machinery beyond an occasional planning or advisory committee rarely exists; in addition there is reason to doubt whether the proper function of such societies is not to foster the research spirit, to accord recognition to worthy research men and projects and to lend moral support to investigative work in universities, institutes and bureaus rather than to become research bodies themselves.

Practically all of the societies engage more or less extensively in publication; indeed it is at this point that they commonly find one of their principal forms of usefulness. No society of consequence fails to maintain a quarterly or other journal and, conversely, few significant learned journals in the country lack such a connection; nearly all publish annual volumes of proceedings; and a growing number either publish di-

rectly books and monographs or subsidize (sometimes with the aid of revolving funds supplied by outside donors) commercial publishers who issue them. Twelve American societies devoted to humanistic or social sciences received for purposes of book publication between 1919 and 1931 a total of $220,098.74. Nevertheless, more ample funds for this form of activity remain a major desideratum.

The services of learned societies are by no means confined to their own members or even to the scholarly fraternity as a whole. Through studies and discussions of problems of college, secondary and even elementary education in their respective fields many societies give useful stimulus and guidance to the teaching profession. By maintaining advisory committees and through contacts and work of their members individually many render significant aid to agencies of national, state and municipal government. In varying degrees nearly all popularize the results of their work sufficiently to contribute directly or indirectly to the increase of public information and to the development of intelligent public opinion. It should be added, however, that in matters of opinion—especially in such controversial domains as economics and political science—the societies rarely or never put themselves on record as such, preferring rather to provide a forum for the presentation of scientific data and to leave individual members free to express such opinions and to put them before the public in such fashion as they desire.

In a more dogmatic and authoritarian age ex cathedra pronouncements of academies and similar bodies strongly suggested omniscience and finality and usually carried weight accordingly; at present the judgments and opinions of even the most eminent members of learned societies have as a rule rather less influence than that to which ripe and disinterested scholarship entitles them. One hesitates to characterize the general trend and effect of the work of learned societies as any longer distinctly conservative; uninformed and unbalanced radicalism meets short shrift, but the breaking of new ground in thought or method whether by young or old wins almost unfailing acclaim.

The earlier European learned societies long had a pronounced international character, which was well reflected in their use of Latin as the old and of French as the new international language. The growth of modern nationalism has unfortunately resulted in a much greater degree of separation, from which, however, the academies and societies of today are being measurably rescued by the rise of international federations or unions, notably the Union Académique Internationale founded in 1919 and comprising thirty-one organizations (in eighteen different countries including Japan and the United States) devoted to the philological, archaeological, historical, moral, political and social sciences. This UAI holds an annual meeting in Brussels, maintains a bureau empowered to act for it between general sessions and concerns itself chiefly with advancing international projects of research and securing the good offices of its affiliated bodies for enterprises undertaken and supported by individual academies.

The representative of the United States in the international union is the American Council of Learned Societies formed in 1919, incorporated in 1924 and consisting of two delegates from each of eighteen constituent societies that have grown up in the humanistic and social fields. The council maintains executive offices in Washington, holds an annual meeting and operates largely through an executive committee, an advisory board and an extensive series of committees of experts. In the first ten years of its existence it received and disbursed about $1,500,000, which was spent mainly in subsidizing publication and in assisting significant pieces of research. Of kindred nature is the Social Science Research Council organized in 1923 and composed principally of delegates of seven affiliated societies. This body has headquarters in New York, has received and disbursed large sums and not only undertakes and subsidizes ambitious research undertakings but through exploratory committees seeks systematically to discover neglected areas of social research and to plan adequate cultivation of them, especially areas or subjects which cut across the boundaries of two or more disciplines. In the humanistic field the Council of Learned Societies and in the social field the Social Science Research Council administer numerous research fellowships designed for younger scholars and make many smaller grants in aid of individual research efforts.

FREDERIC A. OGG

See: PROFESSIONS; TEACHING PROFESSION; UNIVERSITIES AND COLLEGES; EDUCATION; RESEARCH; ACADEMIC FREEDOM; PATRONAGE; ENDOWMENTS AND FOUNDATIONS.

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LEATHER INDUSTRIES

TANNING ..... JOHN R. ARNOLD
LEATHER PRODUCTS ..... BLANCHE HAZARD SPRAGUE
LABOR ..... BLANCHE HAZARD SPRAGUE

TANNING. The tanning, or leather making, industry supplies the raw material used by the manufacturers of leather products. The leather industries as a whole occupy an important economic position; in the United States they constitute a major industry, employing in 1929, for example, 318,415 wage earners, or over 2.5 percent of all wage earners engaged in manufacturing. About 50,000 of these are accounted for by the tanning industry. Nearly every country has some sort of tanning industry; approximately one third of the world's output of leather, however, is produced in the United States. Tanning is an intermediate industry dependent on the producers of skins and hides and on the manufacturers of leather products.

Processed skins more or less deserving of the name of leather are among the oldest products of human industry. All primitive peoples keeping herds and flocks and all hunting tribes living in temperate or cold climates have known how to produce leather for clothing and other purposes. The skins dressed by many of these peoples, it is true, are not strictly tanned but correspond rather to such modern specialties as rawhide and chamois skin, primitive tanning being essentially a process to preserve skins and hides from rotting and to make them pliable. But the true leather made on a great scale by the native tanners of India is often of excellent quality and has been used in large quantities by the leather goods industries of the West. Leather has certain qualities not easily or completely duplicated in other materials. But the inelastic supply of hides and skins with other conditions has restricted the expansion of the industry. No important new use of leather has been developed in nearly a century, and of very late years the consumption has even relatively declined a little.

Leather making was highly developed in the ancient Chinese, Indian and Mediterranean civilizations. The ancient methods of tanning were very similar to those prevailing in Europe until well into the nineteenth century. Moreover not only were the processes used throughout this long period and in many countries much alike, but the leather making industry was governed by physical and economic conditions that varied comparatively little from place to place. The raw material was mostly of local origin, and the characteristic unit was a small local enterprise. The curing of hides for shipment in a wet state was not well understood, and salt for the purpose was often scarce or expensive; the undeveloped transportation facilities were inadequate for handling both the hides and the heavier and cheaper leathers. In parts of the Near and Middle East, where the raw material was generally of a lighter weight and long rainless seasons facilitated air drying, these difficulties were somewhat less serious; and the more valuable finished products of the leather industries of those regions began to figure early in the import trade of very distant lands.

As the processes of leather making are essentially chemical and biological, they were inevitably carried out in times that knew nothing of biology or chemistry by tradition and rule of thumb. As a result there flourished the trade secret and the passing on of such secrets through the system of apprenticeship. An industry ruled by these conditions moreover was well adapted to guild organization. The mediaeval tanners were organized in guilds separate from those of the makers of leather products, and they occu-

pied an important position in the structure of guild society.

Methods of leather making began to be improved in both Europe and the United States early in the nineteenth century; but the change was very slow, tanning being one of the industries least affected by the earlier stages of the industrial revolution. Other efforts at improvement concentrated chiefly on the shortening of the process of tanning proper (which in the case of heavy hides had always taken eight or nine months or even longer) and on the devising of machines intended not so much to save labor as processes, such as the even splitting of hides, which it had been impossible to perform by hand. The first shortening of the tanning process was accomplished by the simple mechanisms known as rockers, which keep the hides continuously in motion as they hang in the tan liquors.

The general introduction of machinery into tanneries, however, came late, and even today the mechanization of certain processes is so recent that their results are not yet wholly satisfactory. This is true, for instance, of the scudding, or cleaning of raw hides of the fine hairs missed by the unhairing machine, and of boarding, or graining, and the application of the seasoning mixture in finishing leather. Moreover scarcely any machine yet devised really performs an operation of leather making automatically. Operators of tannery machines must still as a rule be skilled workmen, for if they do not feed the stock and manipulate it correctly during the process they may easily spoil valuable material.

The one radical change in the methods of leather making came with the introduction in 1884 of the chrome process of tanning. Many efforts to develop a process of tanning with mineral salts had been made in Europe earlier in the century, and the successful method was largely the result of German research. But the inventor although of German birth was an American citizen, and his invention was first put to use in the United States. The chrome process was soon extended to the tanning of kid leather and calf skins, but with the heavy leathers (sole, belting, harness and the like) its success has been limited, and its application to some kinds of side leather and sheep skins is quite recent. The new process made possible for the first time the large scale manufacture of kid shoe leather at a moderate price. In the case of all upper leathers it favored a mass output of even quality, suitable for the fully mechanized manufacture of shoes. This was appreciated rapidly in the United States and only a little later in Germany. In France and England the change was much slower and is scarcely yet complete.

The industrial revolution caused an extensive absolute increase in the consumption of shoes and some other leather goods as of most commodities through the growth of population. In the older countries it also led to some expansion in the per capita demand through the substitution of leather shoes for sabots and sandals or for no footwear at all, by the improvement of purchasing power. But the growth is easily exaggerated, and in the United States at least the per capita consumption has been declining a little for thirty or forty years. The industrialization of tanning was accompanied by some shifts in the relative importance of different countries. During early modern times no one country can be said to have led the others except as France specialized in high grade alum tanned kid for gloves and slippers. The development of British export trade with the industrial revolution brought considerable development in well made utilitarian leathers. The United States and Germany attained international importance in the leather trade with the introduction of chrome tanning and then first challenged French predominance in the kid industry. Since then the relative importance of England and France has declined; but all the industrialized countries at present make substantial quantities of good leather.

Leather making began in the North American colonies with the coming of the earliest settlers; in some cases colonies encouraged tanning by prohibiting the export of hides and skins. The early appearance of small local tanneries in so many American communities was due primarily to the sparse population and the bad roads; but there was also a widely distributed supply of hides and tanbark, and much heavy shoe leather was needed for a rapidly growing population that consisted largely of farmers and other outdoor workers. At a comparatively early period several factors began to distort this local dispersion of American leather making. Of these the most important was the hemlock, chestnut and oak bark supply of the Appalachian highlands. The sole leather tanneries especially moved to this supply; and even today, when most of the bark is gone, hides and quebracho extract from Argentina are hauled up steep graded single track railways into remote valleys of central Pennsylvania and West Virginia, from

which the finished leather must be again shipped out. The calfskin industry, however, remained near the dairies supplying the cities, and the side leather and sheepskin tanneries, being relatively dependent on a reservoir of skilled labor, began to concentrate in the vicinity of Boston. Somewhat later an industry using the Michigan bark supply and selling to the western farm shoe manufacturers grew up in Illinois, Wisconsin and Michigan.

Because of its physical requirements leather making was never a true household industry. Space and drainage were essential, the work was not for women and children, and the capital tied up in stock in process was always relatively large. The more important tanneries therefore early became small factories, while the smaller tanneries today retain many marks of handicraft methods. In the United States ownership or control by families or by close corporations of the family type has been of remarkable prevalence and duration; one tannery of high repute is said to have been under the management of the same family since 1715. The loss of the purely local character of the American tanning industry led to a great decrease in the number of plants and a great increase in their average size. The 6696 tanneries of 1849 had declined to 1306 by 1899, while the number of wage earners rose from 25,595 to 52,109. Between 1914 and 1929 the number of tanneries decreased one third, from 741 to 471; and the proportion of the chief types of leather made by the larger companies has in the main increased. But some large companies have done poorly, and mergers have been few and on the whole unfortunate. The conditions of leather manufacture do not adapt it either to very large plants or to the centralized absentee management of many widely dispersed plants.

Specialization in American leather manufacture developed irregularly. Sheepskin and calfskin tanning from the first involved somewhat distinct techniques. The manufacture of sole and side upper leather separated with the movement of the former to the Appalachian bark supply and the introduction of the splitting machine. The kid leather industry of the United States was made possible by the invention of chrome tanning. There was no domestic supply of goat skins, and numerous attempts to acclimate the French process of tanning such skins with alum and salt had failed. The chrome process made practicable the utilization for the first time by a modernized industry of the large goat skin supplies of the Mediterranean basin, of the Orient and of Latin America.

Although the American leather industry is extensive, current statements have frequently exaggerated its size—partly as a result of the abnormal expansion during and just after the World War. The value of the annual output between 1923 and 1929 was about $450,000,000 or $500,000,000 compared with $928,591,000 in 1919 and $367,201,000 in 1914. The number of employees just after the war reached 72,000 but declined to an average of about 50,000 in the years 1920 to 1929. It is hard to generalize about the output because of the varying units of sale; but on the whole the quantity has decreased in recent years. This decline has been the result in part of the loss of war created export markets and in part of the competition of substitutes for leather. The most serious competitors have been rubber and composition soles and rubber and wooden heels and satin and other fabric uppers for shoes. At the same time the vogue of low cut shoes has reduced the demand for all upper stock. Other materials and the individual motor drive have cut into the demand for belting leather, the closed car and the change in styles of furniture into that for upholstery leather, and the development of the so-called artificial leathers into that for fancy sheep and calfskins. Artificial, or rather imitation, leather has been improved in quality and in some cases is preferred to true leather. But it has not been a prime factor in the situation. Of very recent years the competition of substitutes for leather has been developing slowly if at all, and in the near future further losses to the tanning industry do not seem likely to be important.

The American leather industry became mired in the slough of excess capacity and unsatisfactory profits for many enterprises earlier than most of the others that now afford it such a variety of company—in the main shortly after the war. The underlying causes were the same as in other industries; but the trouble developed earlier in the case of tanning because of a stabilized demand, of conditions not favoring complete mechanization and of a peculiarly excessive expansion during the war. Throughout the difficulties of the industry have been accentuated by slow turnover, by unskilfully managed purchases on highly speculative raw material markets, by heavy inventory losses following price declines and by intense competition. It should be said, however, that the progress made in eliminating the least efficient units has recently

been much greater than in most industries. One marked effect of the financial stress of recent years in the tanning industry has been on labor costs. The conventional belief of tanners has been that these costs were unimportant. Relatively to the situation in some other industries and to the cost of leather raw stock this has been more or less true; but the belief tended to divert attention from a mass of inefficiency in the handling of labor that, as prices sagged and profits disappeared, could not be allowed to continue. The concentration of the American output in fewer plants was probably accompanied by some increase in the productivity of labor all along; but the rising prices after 1900 did not encourage effort in that direction, and such evidence as there is does not suggest that the improvement up to 1922 or 1923 was very great. Since 1923 or thereabouts there has been a 15 percent increase in productivity, resulting almost wholly from improved organization and management of the labor force.

The World War by cutting the exports of the European belligerents stimulated production not only in the United States but in many smaller countries previously dependent upon imports. This was particularly true in southern South America, South Africa and Australasia. Some of this development failed to survive the post-war deflation; but these countries now mostly supply their own heavier and cheaper leather, and in the case of Argentina and Brazil at any rate most of the specialized leathers as well. The domestic manufacture of leather of good quality does not, however, expand very rapidly in the less industrialized countries, for the skill and management required are not easily made available in new centers.

Apart from the United States the greatest increase in capacity and output since 1914 has been among the three major European producers. Germany in 1928 had a leather output of $225,000,000, England in 1929 of $200,000,000 and France in 1929 of $165,000,000—all substantially higher than the pre-war output. Despite many small establishments in Germany there is a good deal of concentration, twenty-two tanneries producing over 40 percent of the output. Fully as much as in the United States the European producers are affected by excess capacity. The result has been an intensified struggle for foreign markets. Germany is the largest exporter, its foreign sales averaging $60,000,000 yearly in the period prior to 1929, and large amounts of German capital are invested in foreign tanneries. French exports, averaging $37,500,000 yearly from 1927 to 1929 are widely distributed and consist mainly of quality leathers. Although struggling actively for foreign markets England is still a large importer. American exports after reaching a temporary and very abnormal peak of $218,783,000 in 1919 declined precipitately in the subsequent years and in 1929 amounted to $42,000,000, compared with $38,000,000 in 1913. Exports of certain kinds of leather, notably kid and patent, continue very important; the loss has been chiefly in sole leather. The world trade in leather in 1929 amounted to $250,000,000; 50 percent was in the hands of Germany, England and France. The United States exports about 10 percent of its leather output, the major European producers 25 percent.

The competition of European leather in the United States, long insignificant, has recently been of greater importance; and in 1930 it was made the reason for the reimposition of import duties on the principal shoe leathers. The chief although not the sole explanation of these inroads has lain in the cheapness with which many relatively small European tanneries, with a labor supply better adapted to a specialized than to a staple product, have been able to supply the now popular novelty upper leathers.

From 50 to 70 percent of the value of leather is in the raw hide or skin. Although many animals and even one or two fish (including dogs and seal) contribute skins to the making of leather, the industry's source of raw materials depends mainly upon the operations of the livestock and meat industries. The United States is among the principal importers of raw materials; one quarter of the cattle hides, one half of the calf skins and practically the entire quantity of goat skins consumed by the American industry are imported. Total imports in 1929 amounted to $137,000,000, more than three times the value of the exports of leather.

Some of the raw material problems of the American industry which seemed so acute during and just after the war have solved themselves through the diminishing intensity of the demand. Imports of raw hides and skins (except goat skins, which are still all of foreign origin) have fallen off, and the reimposition in 1930 of a duty on cattle hides after seventeen years of controversy had surprisingly little effect. Some European countries, Germany, England and France, are also heavy importers of hides and skins. The need of the industrialized countries

for additional raw material has caused the international trade in hides and skins to be left comparatively free, except as producing countries have imposed export duties for revenue. Import duties on leather, however, have since the war been imposed very generally to a restrictive extent in order to encourage home industry. In recent years the tanning industry has made efforts to improve the quality of the hide and skin supply, to reduce its losses from unsatisfactory material. But the results have been rather meager. With the decline of the wartime and early post-war demand exports of hides and skins from some countries have dwindled or disappeared. This has been a matter partly of inferior quality or preparation and partly of competing local demand. The modern shoe industry has reduced the waste in the utilization of leather; but except from 1915 to 1920 it can hardly be said that this problem has been an outstanding one.

JOHN R. ARNOLD

LEATHER PRODUCTS. The boot and shoe industry is the most important of the group of industries manufacturing leather products; it absorbs approximately 90 percent of the leather consumed in the United States and is of decisive importance also from the standpoint of output, accounting for over two thirds of the value of leather products (Table 1). The slightly higher relative value of products other than boots and shoes is due mainly to their variety character; these often require more labor in their manufacture and frequently use other materials in addition to leather. The making of variety leather products (including home furnishings and toilet articles) is becoming increasingly important in the United States as well as in the major producing countries of Europe and is responsible for the growing output of fancy leathers made from the skins of animals such as the alligator, walrus, lizard, shark, snake, ostrich and porpoise.

TABLE I

OUTPUT OF LEATHER PRODUCTS IN THE UNITED STATES, 1929

GROUP	NUMBER OF ESTABLISHMENTS	NUMBER OF WAGE EARNERS	VALUE OF PRODUCTS
Boots and shoes	1341	205,640	$965,922,000
Trunks, suitcases and bags	467	11,359	63,968,000
Pocketbooks, purses and card cases	290	10,430	68,627,000
Gloves and mittens	257	9,203	39,122,000
Belting	207	2,602	35,631,000
Saddlery and harness	260	3,339	23,338,000
Miscellaneous	984	25,910	228,023,000

Source: United States, Bureau of the Census, *Census of Manufactures, 1929: Summary by Industries* (1930).

All primitive peoples have fostered leather industries and have made numerous leather products even before metal weapons or tools were used. In warm countries a small clout of leather sufficed for clothing; a suit of furred skins was required in coldest regions and one of leather in moderate climates. Since primitive peoples knew no other rope, their tent poles, their clothing and their bundles were tied together by strips of tanned leather or rawhide thongs. They made well tanned skins into shields, helmets, breastplates and slings; fashioned skins into suitable caches for storing food while they were living in tents or on trek; and out of other leather constructed papoose boards, high hunting boots, moccasins and leather strapped sandals. Prehistoric peoples, whether Egyptians or American Indians, often achieved in their leather making an artistic quality which causes highly civilized people today to marvel at their skill.

In the ancient Mediterranean civilizations a high degree of artistry and output was attained in the making of sandals, shoes and hunting boots as well as the leather jerkins and greaves for soldiers and field workers. With the coming of class divisions rank and political office among both Greeks and Romans were designated by the color and decorations of footwear. The sandals of both men and women in the upper class families in the late Roman Republic and the Empire were decorated with gold, precious gems and exquisite cameos. The Greeks and Romans used leather in straps for boxing (some of soft leather, some of hard), thongs for spears, harnesses and leather shoes for horses and oxen and portions of armor. Certain quarters in the cities and towns were set apart for the leather workers; sometimes away from the residential districts and near the tanneries, at other times near the market places for the convenience of customers. A Roman shoemaker was sometimes found next to a bookstore, since the parchment rolls which constituted books were tied with leather thongs. These ancient leather craftsmen, highly skilled and jealous of their knowledge, occupied an important civic status; the making of leather products was one of the most prosperous industries

and was responsible for a considerable foreign trade.

During the early Middle Ages craftsmanship in Europe relapsed into the older primitive methods except on the abbey estates and in the monasteries, where much of the skill and learning of the ancient world was kept alive. The Moors, however, who entered mediaeval Europe through Spain, had absorbed and improved upon the most elaborate leather industries of earlier peoples; and even after they had been driven back into Spain and held there, their morocco and cordovan leather was welcomed throughout Europe by aristocrats and merchants. Moorish art and craft were adopted eagerly by mediaeval Europe, even in Britain. Walls were hung with beautifully designed leathers; jerkins and trousers of pliable but almost impenetrable leather were worn by knights and horses under chain armor; leather gauntlets were used by falconers to protect their wrists from the bites and scratches of angry birds; illuminated books for monastery libraries, for lecterns in cathedral chancels and for the prayer desks of princesses were bound in rare leathers and decorated with exquisite tooling in gold. This improvement and refinement in leather products resulted in a sustained effort on the part of all leather craftsmen to maintain high standards. The secrets of the trade were kept with inviolate vows; an increasing sum of knowledge was passed on by masters to apprentices; the demand for better and more beautiful leather products by royalty, clergy and nobility became general; and the guilds of leather workers grew in importance. The leather products of all countries bore a strong resemblance to each other. Hanseatic League merchants, traveling over all civilized Europe in the later Middle Ages, carried with them standards of performance as well as products. Despite the accumulated and assimilated experience of all skilled leather workers for so many centuries little technical advance had been made in Europe up to the sixteenth century; the boot and shoe industry, for example, could not pass beyond the custom stage. Shoemakers' tools like those pictured on a prehistoric Egyptian tomb would have been easily recognized and handled by Hans Sachs, the sixteenth century minstrel shoemaker of Nuremberg. When an English shoemaker set up his shop in Plymouth or Boston in 1650 he used the same essential tools and the same processes as Hans Sachs: four processes—cutting, fitting, lasting and bottoming; and only eight tools—knife, awl, needle, pincers, last, hammer, lapstone and stirrup.

In the New World the shoemaker and the saddler like the tanner and currier had to adapt themselves to frontier conditions. Industry retrograded to the simplest form possible; i.e. the home stage. The father of each family made up the year's supply of boots and shoes for his family, the harnesses and saddles to be used on his farm, as best he could from leather tanned in his own or his neighbor's bark pit. As the colonists prospered and a sufficient supply of labor allowed some specialization, there appeared the itinerant cobbler, already a familiar sight in England. In the colonial seaports higher standards of workmanship and better leather products soon resulted from guild regulations. The supply of local leather, small and uncertain at first, was considerably augmented by imports of foreign leather. Foreign shoes were also imported, and with them the colonial shoemakers attempted to compete. The shoe industry passed rapidly in such seaports and more thickly settled communities into the stage of custom, or "bespoke," work. At first custom shoemakers undertook only definitely ordered work for known individuals. Gradually, however, in nearly every shop in New England and New Netherland an accumulation of rejected or unclaimed bespoke work was left on the custom shoemaker's hands and had to be disposed of by chance sale, either at a fair or over the shoemaker's window sill. Such work represented a loss, but it presented a suggestion and made a nucleus for "salework" made up without definite order. Out of this developed the practise of regularly organized production for market financed by merchant capitalists, who also undertook to find the markets. The entrepreneur hired men to make up shoes working in their own houses, generally with materials which he supplied. Each worker made a complete shoe and sometimes supplied the tools and materials. Out of this development came a considerable intercolonial and foreign trade with its centers in Boston, New York and Philadelphia.

By 1810 custom, or bespoke, work survived only in the production of high grade, handmade shoes worn by well to do people. Capitalists, encouraged by growing markets, tariff protection and the chance of tempting profits, now engaged in bigger ventures made possible by the new and better organization of the boot and shoe industry. This was characterized by specialization in processes and the rise of the central shop, with work done in the kitchens or the dooryard shops

of the shoemakers, and known now as the domestic or putting out stage. Between 1837 and 1857 there took place another reorganization of production and distribution in the boot and shoe industry. New styles and a greater variety of shoes, made by a few enterprising and ingenious shoemakers who knew the whole trade, were taken over by entrepreneurs who had sufficient capital to exploit the skill and experience of these shoemakers. New and larger markets, both domestic and foreign, were captured for the shoe industry, which manufactured an increasingly superior quality of shoes. Railroads and clipper ships made transportation more adequate and regular, and this very regularity increased the necessity for speed and for standardization of product. Manufacturers' competition retained the keenness which it had assumed in the early 1840's and forced more expert supervision at the central shop in the 1850's. It was gradually seen that economy and skill not only in cutting out shoes but in designing them were necessary in competitive fields. Tin patterns for sole cutting, a machine for stripping sides of leather into sole widths, and better lasts came into common use. During the 1850's straight fits were displaced by rights and lefts, which had been known to the ancients. Variety in widths as well as in lengths and style became desirable, and better packing was introduced.

Hand labor had been dominant about 1837, all sewing on shoe uppers being done by hand and the soles sewed or pegged by hand; twenty years later the uppers of many boots and shoes were being sewed either on the dry or the wax thread machines. Several kinds of pegging machines had been invented for fastening the soles of cheaper boots and brogans. Men went into the central shops to stitch as well as to cut; others followed to tree and to polish the boots and shoes which came back soled from the domestic worker's shop. Larger central shops, known as manufactories, were constructed to care for the increase in both stock and workers in the early 1850's. Agents called freighters were employed by the larger firms to carry cut stock to domestic workers and to collect the finished work. They not only helped to set the required pace for workmen in the dooryard shops, known as "ten-footers," but also kept account of work and wages. Prices for piecework became more generally established, and cash payments were more frequent and regular now that banks were on hand to discount the manufacturers' notes. Increased speed and specialization were necessary in the bottoming of shoes to keep up with the growing amount of machine work in "fitting" the uppers; and there were organized gangs of rapid experts, who divided the process of lasting and bottoming into minute parts. The modern factory system was developing rapidly.

Meanwhile shoemaking in northern Europe had also been changing slowly but definitely. The growth of national and international economy developed indirect markets for the boots and shoes produced by these workmen. During the seventeenth and the early eighteenth century handicraft, or custom, work, with some extra sale work, had been as prevalent in Europe as in New England and New Netherland, under a similar town economy of production for direct sale to townspeople. Later the English shoemaking industry changed to meet the requirements of its growing domestic and export trade. In the organization of the shoe industry England entered the capitalistic stage later than in the organization of its woolen and cotton industries. Before the eighteenth century was over the "Silas Marners," who had left off spinning and weaving in their cottages to go into textile factories, were being replaced as cottage workers by shoemakers. Both men and women worked under the putting out system for merchant capitalists who anticipated the market with a daring that often yielded spectacular profits. One of them, John Came, a former cordwainer's apprentice, who died in 1796, bequeathed the sum of £37,000 for charity. No customs shoemaker could have done this: only an entrepreneur making boots and shoes in large quantity for foreign trade could meet such business success. By the 1760's in England the distinction was complete between the shoemaker working in his custom shop for his own clients and the wholesale maker. The wholesale producers of boots and shoes bought stock in large quantities and employed many craftsmen to make up the materials sent to them in their homes in hampers or baskets. Gradually shoemaking was taken from the workers' houses into their garden shops, or "crees," which were like the New England ten-footers. New workers were hastily taught to perform their one operation in the making of a shoe. In England as in the United States the system persisted until the 1850's.

France, which had outstripped England in mediaeval times, kept pace during this later period. By the eighteenth century the French tanning processes were superior and the supply of skins was better; even English shoemakers

traveling in France acknowledged that the French boots and shoes were the more comfortable and better fitting. English shoemakers were urged to study and adopt French technique. Like England, France was working in the seventeenth and the early eighteenth century for a wide domestic and export trade in boots and shoes. French shoemaking had always been a flourishing industry, and French kid shoes for women and calf boots for men were welcomed in many countries and had few rivals. From the earlier custom shops their manufacture had passed into the hands of entrepreneurs working for the wholesale trade, organizing production under the domestic system. French handwork was supplemented by a few hand power machines even before the advent of sewing machines for uppers and in 1863 of the Blake sewing machine for soles.

Both Germany and Austria lagged behind France and England in developing a modern boot and shoe industry and in adjusting their manufacture to national and world economy. At the beginning of the twentieth century many German shoemakers as well as toy manufacturers, wood carvers and lace makers were working under the putting out system of manufacture, but thereafter the German boot and shoe industry was rapidly modernized.

It was in the United States that the boot and shoe industry was first revolutionized by intensive mechanization. The rise of the factory system had begun in the central shops with the supervision of the stitching on the uppers, of the lasting and finishing of the assembled shoes when they were brought back to be treed, polished, crowned and packed. Such supervision, which increased in both amount and directness in the new manufactories, was the less obvious but more vital characteristic of factory production. A more obvious but far less important attendant characteristic was the change to these larger buildings, where machinery run by hand, foot or water power could be better accommodated and which provided more office space and greater storage facilities for uncut stock and cases of completed boots and shoes. Larger amounts of capital, fixed and circulating, were now necessary as the capitalist controlled the whole process of production and not, as was formerly the case, merely the marketing.

The gangs of expert bottomers, who sewed on soles by hand, had already demonstrated that the limitation of each worker to a small part of the labor process makes possible greatly increased production. Yet the speed gained by the subdivision of labor on the soling processes was not commensurate with the pace made possible by machinery in fitting and lasting the uppers. Various kinds of pegging machines with wood, brass or wire pegs had been invented and were in constant use for the coarser shoes, which were too rigid to be comfortable. The better shoes had still to be soled by the slow hand process using the awl and waxed thread as among the ancient Egyptians. Equilibrium in speedy production could be achieved only by the invention of a machine to stitch soles to uppers. Lyman Blake of South Abington, Massachusetts, invented such a machine to be run by foot power and patented it in 1858. When further experiments, new models and new patents threatened to exhaust Blake's capital, he sold the machine in 1859 to Gordon McKay, who thereafter (from 1861 to 1872) employed him at good, regular wages. Blake had kept the rights to his foreign patents; and in Europe his invention, always called the Blake machine, was set up in all progressive shoemaking centers during the 1860's. He did not realize any very large profits from his inventions. McKay made several improvements in the Blake machine, until finally a lasted shoe put on the iron horn, which carried inside itself a waxed thread, could be stitched around the edge of the sole firmly from heel back to heel. The capacity of the sole stitching machine was increased from 600 to 1200 pairs a day. Stimulated by contracts from the United States government during the Civil War the number of McKay machines in use increased, until by the end of 1863 there were in operation a total of 200, which had stitched 2,500,000 pairs of shoes. By 1870 over 25,000,000 pairs had been stitched and the "McKay shoe" was well known wherever boots and shoes were made in factories. In 1862 McKay announced his policy of renting and servicing his entire output of machines on a royalty basis and attached an automatic counter to each machine to keep the tally of pairs stitched and of the corresponding royalty which should be paid.

Although many inventors continued to work on other soling machines after the success of the Blake invention, no machine of equal importance for the soling of shoes appeared until the Goodyear Welt was put on the market in 1875. For uniting the sole to the upper in a substantial way, thus making for both comfort and good appearance, there had never been any process so adaptable as that of sewing a welt strip to the

upper and inner sole and then stitching the outsole to this welt. Until 1875 the only method had consisted of awl and waxed thread, bristle and skill. Goodyear invented its rival in the form of a speedy welt sewing machine, which came to be used wherever a higher priced machine made shoe was in demand. The Goodyear Welt was in part the result of McKay's success and in part the result of inventions made by Auguste Destouy in 1862 and improved by Daniel Mills after Charles Goodyear had bought up the rights and patents.

After these two machines, of such fundamental importance to the shoe industry, had come into general use, there appeared an imposing array of other machines to keep pace with them and to link up the processes: heeling and lasting machines, channeling and rough rounding, leveling and edge trimming, eyeleting and buttonholing machines. Many shoe machinery companies were buying up inventions, manufacturing their own machines and fighting the claims of others. Much money and effort were wasted in litigation and in loss from "defeated machines." The rivalry was ended in 1899 by the organization and accepted domination of the United Shoe Machinery Company, which combined three of the largest but non-competing shoe machinery companies and in less than fifteen years was manufacturing and leasing over 550 different essential and auxiliary machines. The leasing of shoe machinery had been temporarily abandoned after the expiration in 1880 of the original McKay patents and extension; in the resumption of the practise by the United Shoe Machinery Company the royalty system and the servicing of all machinery have been two fundamental principles. The company, now incorporated, has been charged with monopoly and legal efforts have been made to destroy its leasing system, but it still supplies shoe factories all over the world on a royalty basis.

The American shoe industry was completely mechanized within an incredibly short time. By 1890 custom shoe shops had become unimportant; they survived alongside the factories, but the value of their output was small. Each year's refinement of factory, or ready made, shoes, especially after comfort and good finish were secured by the use of the Goodyear Welt, made the existence of the custom shops more precarious. Moreover it required no more capital to equip a small factory with leased machinery than to set up a custom shoe shop. At the same time there took place a definite localization of the shoe industry. In 1860 New England was producing $91,891,000 worth of shoes, 60 percent of the American output. The middle Atlantic states had an output of about one quarter that of New England and made shoes of finer quality. In all the New England centers of production there was considerable local specialization; thus Brookfield specialized in brogans for rough wear, Randolph in fancy high boots, Lynn in women's shoes, various towns in men's shoes and so on. Specialization developed also in the Philadelphia and New York centers as well as in the new shoe centers of the west, which arose first in Ohio, then in Chicago, St. Louis and Wisconsin. The older centers began to feel the western competition; although New England continued to maintain its lead—in 1905 it still produced more than half of the American output of boots and shoes—this lead began to decline perceptibly; production in the middle Atlantic states also declined, while the western centers gained.

Of great importance in the growth of the boot and shoe industry from 1875 to 1900 was the use of steam and electricity for motive power. As early as 1870 motive power had come into use in a few factories in the form of steam engines and water wheels; by 1900 not only was power more extensively used, but electric power had already begun to be substituted for water or steam power. In the new factories of the west the industry was using relatively more electric power and using it more uniformly than in the older factories of the east. The proportion of establishments reporting use of motive power in the boot and shoe industry rose from 65.5 percent in 1890 to 84.8 percent in 1905, while there was a gain of 131.5 percent in the use of electric power from 1900 to 1905.

The growth of concentration in the industry was shown in the census returns for 1880. While the number of operatives increased to 111,152 and the value of output to $166,050,000, there was no appreciable gain in the number of factories and firms, which numbered 1959, although the population of the United States had grown 30 percent. By 1900 the number of manufacturing firms had declined to 1522 and by 1913 to 1355. The years from 1875 to 1900 saw the rapid introduction of more elaborate office systems as a result of increasing mechanization, concentration and output. Records and filing cases, loose leaf ledgers and shipping sheets took the place of bound account books. The number of salaried office employees increased steadily. As

invested capital and overhead increased there was a corresponding increase in production, distribution and concentration.

Cultivation of the export trade was an important factor in the tremendous growth of boot and shoe production in the United States between 1875 and 1900. This new export of shoes was the deliberate policy of the largest shoe firms to find wider markets for their constantly enlarging output. During the American Civil War England had secured the shoe market in the southern states; English ships ran the blockade to land their cargoes of boots and shoes. In 1866 the total value of American shoe exports dropped to almost zero, but by 1870 there had set in a revival, which was followed by a fairly steady increase. The export of 276,179 pairs of shoes valued at $419,612 in 1870 had risen to 5,315,000 pairs valued at over $8,000,000 in 1905. This increasing American export trade aroused severe competition from European producers, whose home and foreign markets were being invaded and who consequently began to adopt American production methods.

The chief competitor of the United States was England. In 1870 English exports of boots and shoes were valued at approximately $7,000,000, those of the United States at less than $500,000. Under pressure of American competition and other economic factors the English industry was rapidly mechanized during the 1880's. Specialization and concentration accompanied its localization at Leicester and Leeds, Northampton and Norwich, London and Kettering, Stafford and Bristol; in 1910 at Leicester alone there were employed 25,000 shoe workers producing an output of $20,000,000. Between the years 1905 and 1913 the British manufacturers greatly improved both productive efficiency and the style and finish of their shoes, and Great Britain became the world's largest exporter of footwear. At the same time it imported large quantities, of which approximately one half were from the United States.

The pressure of American competition in their own markets forced many European manufacturers to adopt the new American shoemaking machinery. The necessity of importing machinery from the United States and the exactions of the leasing and royalty system led to the development of European shoe machinery. A number of firms manufacturing shoe machinery arose in England, and their attempts to capture the market were aided by legislation nullifying the policy of the American shoe machinery monopoly of selling machines on condition that the buyer purchase all other shoe machinery from the same source. Nevertheless, up until the World War England was still buying the bulk of machinery from the British United Shoe Machinery Company, a branch of the American concern. A number of manufacturers of shoe machinery arose also in France and Germany, lessening the dependence on American imports. A modern shoe industry thoroughly mechanized and specialized developed both in Germany and in France, although very many factories of the older type existed alongside the highly mechanized concerns. The largest shoe factory appeared in Switzerland, and Swiss exports became important. Austria-Hungary, while continuing its famous production of beautiful handmade evening shoes, specialized in the production of cheap coarse shoes in the mechanized factories. Nevertheless, although American production methods and American machine made shoes were increasingly imitated by European countries, the importation of shoes from the United States continued large for many years.

The American shoe industry did "billion business" during the World War. Europe furnished unprecedented demands for both war and civilian boots and shoes. The French government alone placed an order for 500,000 pairs of army shoes with one New England firm. Since in the field the average life of a pair of shoes was one month, constant replacement and increasing production were necessary. In 1915 it was estimated that 15,000,000 pairs of army shoes had been shipped to Europe by the United States since the opening of the war, besides the unusually large American exports to British colonies, the East Indies, the Dutch Indies, South Africa and South America. In 1916 exports rose to $42,524,000 and to $74,836,000 in 1919, although the latter figure was affected by rising prices; imports were negligible. War had practically eliminated foreign competition, and American manufacturers practically monopolized the field of world trade in boots and shoes. The entry of the United States into the war again increased production; in the year 1917 the American government contracted for 12,000,000 pairs of shoes. During the war American shoe factories not only operated at full capacity but added considerable floor space and machinery, and the relatively small capital requirements encouraged the opening of new factories.

American production, high in 1919, slumped seriously in the depression of 1921 and revived

in 1923. Thereafter it remained relatively constant (Table II) despite the great expansion of most other industries. There was a considerable decline in the number of establishments in comparison with the war and the early post-war period; and while establishments in 1929 numbered nearly as many as in 1914, concentration increased because of the growth of larger enterprises. There were also changes in the geographical distribution of the industry. The three most important producers were Massachusetts, New York and Missouri; Massachusetts for October and November of 1931 temporarily even lost its lead because of its relative slowness in making the transition to the production of lower priced shoes. The stationary and even slightly declining output in all the shoe centers combined with an enormous excess plant capacity to increase competition and lower profit margins, making boots and shoes one of the "sick industries." The situation was aggravated by the extremely slight rise in productivity in contrast to nearly all other industries; while productivity rose 24 percent from 1914 to 1927, productivity was almost stationary after 1923. This was due primarily to the fact that production was already highly mechanized and that the leasing system discouraged the manufacture of more efficient machines. The aggravation of competition led to many efforts to conserve and increase profits. Some companies employed cheaper and less experienced non-union labor; others intensified the mass production of new types of boots and shoes for chain store distribution, increasing sales by advertising widely even the cheapest shoes. The number of tie ups between shoe manufacturers and chain stores increased greatly. At the same time manufacturers, both individually and collectively, emphasized "style appeal" in advertising and publicity, endeavoring to make men and women "shoe conscious" in order that they should buy new shoes before the old ones wore out. The industry had to counteract the two great modern forces which have tended to prevent shoes from wearing out: the use of automobiles and the wearing of rubber overshoes to protect thin and lightly constructed footwear.

TABLE II

GROWTH OF THE AMERICAN BOOT AND SHOE INDUSTRY, 1914–29

YEAR	NUMBER OF ESTABLISHMENTS	NUMBER OF WAGE-WORKERS	VALUE OF OUTPUT
1914	1355	191,555	$ 502,000,000
1919	1449	211,049	1,155,000,000
1923	1606	225,216	1,000,000,000
1925	1460	206,992	925,000,000
1927	1357	203,110	945,000,000
1929	1341	205,640	965,000,000

Source: United States, Bureau of the Census, *Biennial Census of Manufactures, 1921–27* (1924–30), and *Census of Manufactures 1929: Summary by Industries* (1930).

The effects of relatively declining demand were aggravated by the falling off of American exports. Foreign countries (except England) increased their tariffs on imported shoes, practically barring American exports; at the same time the sale of foreign shoes in the United States, particularly by Czechoslovakia, led to the imposition in 1930 of a tariff of 20 percent on leather shoes, which was raised to 30% in 1932. The American export of boots and shoes has steadily declined (Table III). Exports in 1929 were not only lower than during the war, they were also lower than in the period from 1910 to 1914 and considerably lower than in 1923. American shoe exports in 1929 amounted to only 1.3 percent of total production. While exports declined, imports increased: the imports of women's shoes rose from 115,000 pairs in 1923 to 2,018,000 pairs in 1928. Of these 1,507,000 pairs came from Czechoslovakia. Competition—not only for the United States but for other countries as well—came in its most acute form from Thomas Bata, the dominant shoe manufacturer of Czechoslovakia, who had adopted the most modern methods of manufacture. His army shoe business expanded his capital and experience during the war, and in the post-war period he improved his plant on the basis of high speed mass production accompanied by efficient plant layout and the most modern methods of management. He developed an original system of distribution, barring out middlemen. Despite the world depression the Bata works at Zlin in October of 1931 produced 165,000 pairs of shoes daily, the work of about 32,000 employees.

TABLE III

AMERICAN EXPORTS OF BOOTS AND SHOES, 1910–29

YEAR	NUMBER OF PAIRS	TOTAL VALUE
1910–14 (average)	9,043,000	$15,788,000
1921	8,957,697	24,678,000
1923	7,342,000	17,517,000
1924	6,299,000	15,071,000
1925	6,604,000	15,319,000
1926	5,707,000	12,853,000
1927	5,513,000	12,490,000
1928	4,319,000	10,858,000
1929	4,281,000	11,409,000

Source: *Statistical Abstract of the United States*, for 1910–29.

Bata's expansion was based upon an energetic cultivation of foreign markets.

In Germany and France also there took place a tremendous increase in the output and quality of shoes accompanied by increasing mechanization, specialization and concentration. In the three major producing countries of Europe as well as in the United States the problem of excess capacity has grown more acute; thus in 1928 the 1000 shoe factories in England had a combined capacity of nearly 130,000,000 pairs yearly, while their actual production was not much over 110,000,000 pairs. English exports have increased while imports have declined; in 1928 imports were only one third of the £5,000,000 of exports. But many of England's best markets, such as South Africa, New Zealand and Australia, are developing their own shoe industries; and Australia has already imposed tariffs upon imported shoes. The excess capacity in all the major producing countries, combined with increasing domestic production in the smaller countries and rising tariff barriers, is greatly intensifying the competition for foreign markets and the problem of excess plant capacity.

Leather products other than boots and shoes are increasing in importance. While the American shoe output declined from $1,000,000,000 in 1923 to $965,000,000 in 1929, the output of other leather products rose from $404,000,000 to $468,000,000. Mainly because of the variety and variegated character of these other leather products their manufacture is usually performed by small scale enterprises, with comparatively little concentration. Whereas 1341 boot and shoe establishments produced in 1929 an output of $965,000,000, half this output in industries manufacturing other leather products required the activity of 2465 establishments.

While shoes and saddlery have always been considered necessities, most other leather products have been thought of as belonging to the order of comforts and luxuries. Moors and mediaeval knights hung the cold stone interior walls of their castles with decorated leather and sometimes put leather covers on chair backs and seats, but it was left for the modern age to use leather generally for furniture covering and carriage cushions. Purses were formerly made of silk for the rich but of leather for the masses. English travelers for centuries prided themselves on their luggage of tan colored sole leather, while riders of many countries and centuries took pleasure in their saddles, plain or ornamented but always well made. Machinery has allowed these former luxuries to be considered articles of common necessity. There has been a steady interchange of tools and stitches as well as of leather secrets between the saddlers, shoemakers and bag makers. Each country has made its own adaptations to its climate, uses and needs. When the English saddle was not considered practicable for the western plains of the United States, the American horsemen asked for a long skirted and pommeled saddle. Dry and wax thread machines were tested in work on baggage and harnesses about the same time as in that on shoe uppers, but the saddlery and other leather trades lagged behind the shoe industry in the use of machinery and factory organization. Harness shops, previously often combined with bag and trunk shops, separated when the saddlery trade was organized on a factory basis. The growing use of harness and collars for draft horses in the American west and south and the increased use of light harnesses for horses hitched to wagons and buggies encouraged an indigenous saddlery industry in the second half of the nineteenth century in the United States, enormously reducing imports. High class English saddlery, however, continued to find an American market, although at luxury prices.

Not until the 1860's were the advantages of factories over small shops for the saddlery industry clearly seen. Prejudice against the first wax thread chain stitch sewing machine was so great on the part of workers that even the manufacturers who could see its benefits in lowering their cost of production did not use it until years after its advent. In addition to the sewing machines a leather creasing machine finally helped decisively to industrialize saddlery production because of the need for speed and greatly increased output to meet the demand engendered by the use of buggy harnesses. After the 1870's with decrease of labor under the factory system there existed no harness makers but only harness machine operators. Machines for the saddlery trade were leased upon payment of a bonus and a "rent" of five cents for each one thousand stitches. Later a monthly rental was common.

Few harness factories and harness repair shops have survived the common use of the automobile in the United States and many European countries, and the industry has lost all its old importance except in Latin America, Asia and Australia. But the demand for leather in the making of automobile cushion covers and trimmings has greatly surpassed the earlier carriage demand, although the introduction of the closed car rela-

tively decreased the demand for leather by the substitution of fabric upholstery. The manufacture of automobile fittings has so often been combined with that of leather findings for shoes that it has become a usual accessory in old firms or the welcome and dominant factor in new firms.

The manufacture of leather belting for wheels transmitting power in factories has seriously declined, mainly because of the increasing use of direct drive where electric motors are used; and firms manufacturing belting have been forced into the production of new items. Meanwhile the United States, which formerly imported most of its gloves from France, Italy and England, has developed an important glove making industry. This industry, except for the homemade leather and fur mittens of American Indians and Eskimos, is only seventy-five years old. It is now spread from New Hampshire homes to California factories, but the chief center is still Gloversville, New York, where the industry originated. Specializing first on heavy buckskin, cured in nearby tanneries, the Gloversville manufacturers are now using many kinds of leather from many parts of the world. For gloves designed for street wear they use goat, kid and lamb; for heavier gloves, antelope, calf, mocha (Egyptian sheep) and cabretta (South American kid). Reindeer skin and colt skin are used for dress gloves. Formerly labeled with foreign brands, the Gloversville products now go on their own merits. Probably more than four fifths of all the leather gloves used in the United States are domestic goods, imports consisting mainly of finer lightweight gloves from Europe. In recent years the manufacture of leather coats has acquired considerable importance. Luggage manufacture has expanded, stimulated partly by the growing tourist habits of Americans. The manufacture of novelty leather goods is increasing rapidly, with heavy demands upon fancy leathers.

The manufacture of leather products in the United States and most other countries is already protected by tariffs, but the industries are demanding higher duties. International competition grows keener. But the American industry is still almost exclusively dependent on home markets, although striving actively to promote exports.

BLANCHE HAZARD SPRAGUE

LABOR. Leather workers in former ages occupied an important place in the craftsmen's hierarchy. Today very little of the craftsman's skill and prestige remains, and leather workers are mainly ordinary machine and wageworkers. In many economically undeveloped parts of the world there are still leather craftsmen. They may also be found in modern countries; German, Austrian and Italian craftsmen still work on beautifully colored leathers, tooled with pure gold leaf, producing such luxury articles as card cases, book covers, cases for toilet articles and travel equipment. But these products are increasingly imitated by machine goods, and even in the economically backward countries leather craftsmen are being routed by the competition of cheaper manufactured wares. Some remnants of craft skill still persist in the manufacture of variety leather products, but it has no existence whatever in the completely mechanized production of boots and shoes. The history of the shoemaker offers one of the most striking illustrations of the suppression of the craftsman's skill by machinery.

Shoemakers were not only skilled craftsmen; they were long the theme of song, story and legend. In ancient Athens shoemakers as well as tanners came within the range of Aristophanes' apt description. The leather workers of Rome were proud of their craft and many of them rose to positions of importance not only in their guilds, where they made rules for masters and apprentices, but also in larger spheres of government. Lucius and Martial mention individual shoemakers; and Alfenus, the shoemaker lawyer of the Augustan age, had firm friends, it is said, in Vergil, Horace and Catullus. In Christian Rome at least two shoemakers became bishops; while others, like St. Hugh, St. Crispin and his brother St. Crispianus, are glorified as martyrs and saints in the tales of mediaeval shoemakers. The guilds of leather workers were highly organized during the late mediaeval and early modern periods. Each leather craft had its guild, its song, its coat of arms, its patron saint and its rules and regulations for masters, journeymen and apprentices. Dire punishment came to the sellers of bad ware: to the craftsmen, whether tanners, saddlers, shoemakers or clothiers, who passed off poor work or inferior stock. Charters gave artisans their special privileges and responsibilities. Cities and towns of Italy, France, Germany and England assigned special quarters to leather workers, who had their own guildhalls, where banquets were served, and their own chapels for religious and memorial services. Every leather workers' craft was represented in the miracle plays, and all were given their spe-

cific duties in civic spectacles and processions. Shoemakers acquired a peculiar, almost legendary reputation. Shakespeare introduced shoemakers and their philosophy into *Julius Caesar*. Simon Eyre began his career as a shoemaker's apprentice and became mayor of London and donor of the market hall and chapel for London's shoemakers; while many of the artists, teachers, poets and preachers of the sixteenth and seventeenth centuries had formerly been shoemakers.

Most of these conditions passed away with the rise of the domestic system and the central shop for the production of shoes. By the 1760's the distinction in England between the shoemaker, working in his custom shop for his own clients, and the domestic worker was complete. Disputes arose as to whether shoemakers who had not been apprenticed to regular shoe masters could work as apprentices or domestic workers. The question was settled, not by restrictive legislation, such as the Weavers' Act of 1555, but by the great scarcity of shoe workers. The domestic system made enormous inroads upon the older craftsmen and their skill. Young children were pressed into service to make balls of wax or wax ends or to close the uppers of children's shoes; they worked long hours, often by candlelight. The children's elders strenuously objected, in the name of "liberty," to the increasing supervision and speed made necessary by competition in markets for uniform products and by the regular sailings of vessels with shoes for foreign ports. The treatment of workers in the central shop of Billy Jones of Northampton, England, who docked their wages if he was dissatisfied with the boots and shoes, was typical of the new conditions which prevailed in shoemaking. Conditions under the American domestic system were similar. Each man, woman and child working for the central shop in his own kitchen or dooryard shop devoted himself to one process or specialty. Children, both boys and girls, mothers and older daughters fitted or bound the edges of the uppers and closed or seamed them up at sides or back. Men lasted and then soled the boots and shoes, a process known as making or bottoming. Small girls could stitch the pull on straps for the sides of the boots; small boys could feed the stove with leather scrap, get pails of water for cooling edge irons, cut lengths of threads for sewing on uppers or soles. Children had no hope of play before their stints were satisfactorily performed. Shoemakers were becoming simply shoe workers, who could perform one process speedily and skilfully.

The earlier machines functioned mainly as an aid to the shoe worker; they did not displace his skill. But the machinery introduced by Gordon McKay and others deprived the worker of his skill and transferred it to the machine. This change was swift and complete. Machines were devised for all shoemaking operations, which were highly specialized on the basis of minute subdivision of labor. As machines improved and became increasingly specialized, skilled operatives were displaced by unskilled workers receiving lower wages; operatives ceased being shoemakers who expected high pay. Hundreds of different specialized processes are involved in making a pair of shoes; and shoemaking is today, in both the United States and Europe, one of the most highly mechanized and specialized industries. Even the small shoemaker's repair shop is disappearing in the United States with the rise of chain shops using elaborate machinery in the repairing of shoes.

The impact of machinery, which displaced skill and lowered wages, aroused American shoe workers to revolt in the late 1860's. They had early organized unions; nine out of seventeen conspiracy trials up to 1842 affected shoe workers. In 1859 women workers struck against the introduction of sewing machines, which were taking work away from the home. The Knights of St. Crispin, an organization of shoe workers which flourished from 1868 to 1870, had a membership of 40,000 to 50,000 and was the largest union in its day. It waged and won many strikes, mainly against wage reductions and the teaching of "green hands," but collapsed after the organization of employers led to the loss of strikes. Unionism among the shoe workers, however, revived in the Knights of Labor, as a result primarily of more extensive and accelerated mechanization. The shoe workers were extremely important in the Knights of Labor and provided some of the organization's most outstanding leaders. The Knights waged an important shoe strike and boycott in 1878. Never since have the American shoe workers in general been so thoroughly organized; mechanization and specialization have destroyed their solidarity.

After 1889 the most important organization was the Boot and Shoe Workers International Union, affiliated with the American Federation of Labor, but it never acquired any real strength except in Massachusetts. The tendency to organize separately the workers of each department in a factory was abandoned; but the Boot and Shoe Workers Union absorbed and federated

unions of all kinds of shoe workers, i.e. stitchers, lasters, cutters and so on. Arbitration became a settled policy in the Massachusetts shoe factories after the Brockton strike of 1907 to 1908. There have been many small strikes in the industry, but labor organization and collective bargaining are relatively and increasingly unimportant except in Brockton, which is still the most highly organized shoe labor center. The employers are organized in the National Boot and Shoe Manufacturers Association. Frequent local strikes have been carried on by unorganized workers or by workers organized in the Industrial Workers of the World and in communistic unions; radical unionism, however, cannot yet be said to have any considerable hold over the boot and shoe workers.

An interesting experiment in labor relations took place in Haverhill, Massachusetts, where the Shoe Workers Protective Union (although extremely weak in all the other shoemaking centers) maintained a strong organization. As the industry was declining because of the high labor differential in comparison with other centers, the union and the employers set up in 1924 a permanent board of arbitration. The board reduced wages from 10 to 33 percent and removed all rules "hampering managerial efficiency." This lowering of labor standards was accepted by the union officials, often against members' protests, in the hope of saving what little it was possible to save. For a time an impartial chairman, or "czar," determined labor relations. The Haverhill experiment was not very successful as it evaded the problem of unionizing the other shoemaking centers.

Irregular employment among shoe workers has increased greatly in recent years because of stationary demand and increased capacity. The industry's overcapacity is large; in 1927, 14.5 percent of the shoe factories, which employed 60.4 percent of the shoe workers and produced 65.7 percent of the industry's output, if operated at full capacity could have produced 95 percent of the total output of all shoe factories. Large numbers of shoe workers were unable to secure steady employment.

Conditions are in general similar in the European shoe industry; but the unions are somewhat stronger and irregular employment is mitigated by unemployment insurance. The Bata shoe plants in Czechoslovakia, however, prohibit union organization and impose on the workers an ironclad "welfare" system, but state law provides unemployment insurance.

Unions on a small scale also exist in other branches of the American leather industries, for example, among the pocketbook makers, where there is considerable hand labor. Because of the dispersion of many tanneries in small communities the organization of unions has been difficult, and they have existed only here and there; it is possible that conditions are beginning to change in this respect. Unionism is much more highly developed in Europe; in Germany in 1928 the majority of the 42,000 tanning workers were unionized.

Because of the extremely varied character of the leather industries generalization about wages is difficult. Workers in American tanneries in 1929 had the highest average yearly earnings of those engaged in the three major branches of the leather industries—$1270, about the same as the average for manufacturing as a whole; yearly earnings, however, were not much higher than in 1923 despite an increase in productivity of 20 percent for the tanning industry as a whole and 30 percent for the more progressive companies. The next highest average, $1170, was that of the workers producing leather products other than boots and shoes; certain groups of workers in certain branches have relatively higher earnings. Workers in the boot and shoe industry had the smallest yearly earnings—$1080; this represented a decline from the average of $1110 in 1923, indicative of the wage reductions which have taken place in the industry, and is considerably lower than the average earnings of the great majority of American workers.

Working on leather has always been dangerous. Occupational hazards are particularly great in the tanneries, which, according to a government report in 1919, have been "conspicuously backward in accident prevention." Some progress, however, has since been achieved. Accidents are due to machines and open vats. Occupational diseases are very prevalent: anthrax from handling impaired hides; skin diseases from the sharp cutting edges of hides; poisoning from various chemicals used in tanning; tuberculosis, rheumatism and catarrhal affections from dust and moisture; and other poison hazards where leather is dyed, japanned or enameled. In the boot and shoe factories in addition to accident hazards from machinery, such as punctures from stitching needles and cuts from groove cutting on revolving knives, there is danger of anthrax and other occupational diseases. Similar hazards prevail in the industries making leather products other than boots and shoes. These occupational

hazards can be enormously lessened by proper preventive measures, such as safeguarded machinery and proper lighting and ventilation. The American industries are backward in prevention work; greater protection is provided leather workers in Germany, France and England, who are in addition protected by social insurance.

BLANCHE HAZARD SPRAGUE

See: MECHANIC; GUILDS; JOURNEYMEN'S SOCIETIES; TRADE UNIONS; INDUSTRIAL REVOLUTION; INDUSTRIALISM; MACHINES AND TOOLS; PATENTS; INDUSTRIAL HAZARDS.

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LE BON, GUSTAVE (1841–1931), French publicist and social psychologist. Although Le Bon, who was trained as a physician, had interests which included public hygiene, theoretical physics, archaeology and physical anthropology and was for some time editor of the *Bibliothèque de philosophie scientifique*, he is best known for his writings on social psychology and contemporary public affairs. Accepting Gobineau's emphasis on the importance of the concept of race in the evolution of civilization he espoused the doctrine of a racial hierarchy in which the white races were at the top and the Negroes at the bottom of the scale. He adopted the romantic notion of national character and the doctrine of the racial soul and considered emotion rather than intelligence to be the determining force in history and culture; this emphasis although extreme helped to correct the excessive intellectualism of the prevailing Benthamite psychology. With a decidedly aristocratic and antidemocratic bias he held the masses to be devoid of reason, popular government to be mob rule and all the important achievements of civilization to be the work of the élite. At first he maintained that the Teutonic and Anglo-Saxon peoples possessed real political genius while the Latins were prone to mob dominion. With strange disregard for facts he also held that the Anglo-Saxons and Teutons were characterized by laissez faire political ideals, which he favored, and the Latins by socialistic tendencies. The World War led him to reverse his position completely; the Latins now possessed the unique political genius and were whole heartedly devoted to individualism, while the Teutons were portrayed as decadent devotees of state socialism. Le Bon vehemently condemned revolutions as products of mass hysteria.

In his most popular work, *La psychologie des foules* (Paris 1895, 29th ed. 1921; tr. as *The Crowd*, London 1922), Le Bon held that as a result of the industrial revolution, the rise of modern cities and modern communication life is coming to be characterized more and more by crowd assemblages. Le Bon looked upon crowds as organized aggregations in which the conscious individualities of the assembled persons are virtually lost and in which the subconscious minds of the participants merge and dominate the situation. He pictured a crowd mind which sinks to a common mediocrity, is highly suggestible and is capable of great heroism or incredible savagery, depending upon the motive and leadership. He contended that ideas once implanted in a crowd, primarily by reiteration, spread rapidly by contagion. Le Bon's many books on sociology and public affairs, of which *Aphorismes du temps présent* (Paris 1913) is a good summary, were marked by almost incredible reiteration. His versatility resulted in some superficiality.

HARRY E. BARNES

Consult: Barnes, H. E., "A Psychological Interpretation of Modern Social Problems and of Contemporary History: A Survey of the Contributions of Gustave Le Bon to Social Psychology" in *American Journal of Psychology*, vol. xxxi (1920) 333–69; Belot, Gustave, "Gustave Le Bon" in *Revue philosophique*, vol. xlviii (1899) 182–90; Rageot, Gaston, "Portraits d'écrivains: Gustave Le Bon" in *Revue politique et littéraire*, vol. lix (1921) 307–11.

LECKY, WILLIAM EDWARD HARTPOLE (1838–1903), Irish historian. Lecky was born near Dublin, Ireland, of Protestant parents. He was educated at Trinity College, where he became greatly interested in history. An individualist in political philosophy, a rationalist in religion, a Liberal in politics, a fine scholar and trenchant writer, Lecky was admirably fitted to give an interpretation of history that would appeal to the triumphant middle classes of Victorian England.

The appearance of his *History of the Rise and Influence of Rationalism in Europe* (2 vols., London 1865; new ed. 1890) and *History of European Morals from Augustus to Charlemagne* (2 vols., London 1869; 3rd ed. 1877) won for Lecky immediate renown as a philosophic historian. These volumes occupy an important place in the movement to interpret history in terms of ideas and beliefs. Lecky was a convinced, almost

dogmatic rationalist, and the leading theme of these books is the warfare between reason and theology. *European Morals* is a discussion of the morals of pagan Rome and of the rise of Christianity. *Rationalism in Europe* describes the decay of theology and the advance of rationalism until its triumph in the eighteenth century. Neither book, however, contains original knowledge, and the philosophy that inspired them is now trite and commonplace.

Lecky's magnum opus is *History of England in the Eighteenth Century* (8 vols., London 1878–90; new ed., 7 vols., 1892), a work that has not as yet been entirely superseded. It is primarily a political history with extensive chapters on the social, economic and religious aspects of the period. As a whole it is a product of original research and sober judgment. The style is dignified, lucid and elegant. What it lacks is animation; at times the book becomes dull and platitudinous. Some of its outstanding features are the volumes devoted to Ireland, the chapter on the American Revolution and the chapter on the Wesleyan religious revival.

Lecky was actively interested in public affairs. In politics he was a moderate and cautious Liberal, and his ideal government was that by a parliament elected by the propertied classes. He was opposed to the extension of the franchise, to social legislation, to Irish land reform and to home rule for Ireland. His book *Democracy and Liberty* (2 vols., London 1896; new ed. 1899) consists of a discursive series of essays on public affairs in which he makes every effort to show his dislike and distrust of democracy. In the war against the feudal, theologic order he was a doughty champion of reason and liberty. When this was won and the new struggle began for democracy and social reform, the calm judicious historian became frightened and confused. *Democracy and Liberty* was the subject of a scathing criticism by John Morley (in his *Miscellanies, Fourth Series*, London 1908, p. 169–216).

J. SALWYN SCHAPIRO

Other important works: *The Leaders of Public Opinion in Ireland* (London 1861; new ed., 2 vols., 1903); *The Map of Life* (London 1899); *Historical and Political Essays* (London 1908, new ed. 1910).

Consult: Rhodes, J. F., *Historical Essays* (New York 1909) p. 151–58; Lecky, E. van D., *A Memoir of the Right Honorable William Edward Hartpole Lecky* (London 1909); Gooch, G. P., *History and Historians in the Nineteenth Century* (2nd ed. London 1913) p. 365–69; Fueter, E., *Geschichte der neueren Historiographie* (Munich 1911) p. 480–81.

LECLAIRE, EDMÉ JEAN (1801–72), French industrialist. Leclaire, the son of a village shoemaker, began his career as a house painter. By severe economies he was enabled to rent a small Paris shop and eventually became proprietor of an establishment employing three hundred workers. Leclaire's interest in improving the condition of his workers and in making them more industrious led him to frequent the various socialist schools, especially the Saint-Simonian and the Fourierist, but he found their ideas insufficiently practical and immediate for his purposes. In 1842 he introduced the profit sharing system in his shop. Difficulties were made for him by workers unfriendly to the idea, but he won over his forty-four best workers by dividing among them about 12,000 gold francs as their share of the year's profits. Later his plan was impeded by the police regulation that "the workman must make no covenant with the master." He revised his system several times: sharing, first reserved to the best workers (called by him *noyau*, core), was later extended to all; the best workers always received a higher wage, however, and consequently a greater share in the profits. Leclaire's system, regarded as a model by such economists as Charles Robert and Karl Viktor Böhmert, was outlined by him in a pamphlet, *De la misère et des moyens à employer pour les faire cesser* (Paris 1850). In order further to improve the working conditions of his employees Leclaire with the aid of chemists experimented successfully in the manufacture of zinc white to replace the poisonous white lead which was now barred by statute in various countries.

Leclaire was defeated for the legislature in 1848. In 1865 he settled near Paris in the village of Herblay, where he became mayor and was active in promoting institutions for popular education. The Société pour l'Étude Pratique de la Participation du Personnel aux Bénéfices in Paris, which had been founded by Charles Robert in 1879, looks to Leclaire as the initiator of its policy.

GEORGES WEILL

Consult: Robert, Charles, *Biographie d'un homme utile: Leclaire* (Paris 1878, reprinted 1921); Gaumont, Jean, *Histoire générale de la coopération en France*, 2 vols. (Paris 1923–24).

LEDRU-ROLLIN, ALEXANDRE-AUGUSTE (1807–74), French statesman. After having achieved success at the bar Ledru-Rollin began his career as a liberal statesman in 1834 by

publishing a pamphlet in defense of the republican insurrection known as the Transnonain Affair. From 1841 to 1848 he was the sole parliamentary representative of those extreme radicals who refused any recognition to the July Monarchy. To support his cause he founded the newspaper *Reforme* (1843–50). He played a prominent part in the overthrow of Louis Philippe in February, 1848, and was included in the Provisional Government which resulted. As minister of the interior he made his one lasting contribution, which was also the one lasting contribution of the Second Republic—the organization of universal manhood suffrage. While in office Ledru-Rollin manifested unexpected conservatism in helping to suppress several uprisings, but when a less liberal group came into power after the June Days he became the recognized leader of the radical forces. This position he retained from June, 1848, until June, 1849, making no contribution to legislation but leading the opposition in every important debate. His entire interest was directed toward political rather than social reforms. At first therefore the socialists held aloof and refused to support his candidacy for the presidency, but later they combined with the radicals under his leadership. His downfall came as a result of his opposition to Louis Napoleon's Roman policy. Forced into exile he lived from 1849 to 1870 chiefly in England, where he joined Mazzini and Kossuth in a triumvirate with the ambitious but futile program of establishing republicanism throughout all of Europe. Although at first he was the recognized leader of republican intrigue against the Second Empire he gradually sank into comparative insignificance. He returned to France in 1870 but played only a minor role. Throughout his career Ledru-Rollin, who belongs in the front rank of nineteenth century French orators, was dominated by the ideas of the Mountain of 1793. He was one of the chief agents who carried the principles of the First Republic through the Second to the Third. Today he is remembered in France primarily as the "father of universal suffrage."

ALVIN R. CALMAN

Works: Ledru-Rollin's chief writings have been collected as *Discours politiques et écrits divers*, 2 vols. (Paris 1879).

Consult: Hartmann, G., in *La cité*, vol. iv (1908–09); Calman, Alvin R., *Ledru-Rollin and the Second French Republic*, Columbia University, Studies in History, Economics and Public Law, no. 234 (New York 1922), and *Ledru-Rollin après 1848* (Paris 1921); Weill, Georges, *Histoire du parti républicain en France (1814 à 1870)* (new ed. Paris 1928).

LEEUWEN, SIMON VAN (1626–82), Dutch jurist. Van Leeuwen was a prolific writer on the laws and antiquities of his native province of Holland. Shortly after graduating at Leyden he published a book entitled *Paratitula juris novissimi*, further described as a summary of "Roman-Dutch Law" (*Rooms-hollands regt*). This phrase, which he thus coined, he later adopted as the title of a much enlarged work on the law of the province of Holland, published at Leyden in 1664. In arrangement it follows the *Inleiding tot de hollandsche rechts-geleertheid* of Grotius and includes also a book dealing with procedure. Two years earlier van Leeuwen had published a Latin treatise bearing the title *Censura forensis theoretico-practica*, a work addressed, as its name implies, to both students and practising lawyers. This is of wider scope than the *Rooms-hollands regt*. It deals more fully with the Roman law and devotes attention also to the laws and customs of neighboring provinces and states. The *Censura forensis* has been judicially described as "a book of high authority" (in Denyssen *v.* Mostert, Law Reports 4 Privy Council, p. 255). In the constitution of the South African Republic (Transvaal) and of the Orange Free State—now members of the Union of South Africa—the *Rooms-hollands regt* had attained almost the authority of a statute. It is accessible to English readers in the translation of Sir John Kotzé. Van Leeuwen practised law in Leyden and quite at the end of his life was appointed assistant registrar of the High Court of Holland in The Hague. His supposed greater intimacy with the practise of the courts has been alleged as a reason for preferring him to John Voet, the author of the famous *Commentarius ad pandectas* (2 vols., The Hague 1698–1704). But in fact van Leeuwen is not conspicuous for a grasp of actualities. He not infrequently contradicts himself and in the courts of South Africa and Ceylon has not enjoyed a favor commensurate with that extended to Voet.

R. W. LEE

Works: *Paratitula juris novissimi* (Leyden 1652, 2nd ed. 1656); *Roomsch-hollandsch recht* (Leyden 1664; ed. by C. W. Becker, Amsterdam 1780), tr. by J. G. Kotzé as *Simon van Leeuwen's Commentaries on Roman-Dutch Law*, 2 vols. (2nd ed. London 1921–23); *Censura forensis theoretico-practica* (Leyden 1662; 4th ed. by G. de Haas, 2 vols., Leyden 1741); *Corpus juris civilis* . . . (Amsterdam 1663); *Batavia illustrata*, 2 vols. (The Hague 1685).

Consult: Fruin, Robert, "Over Simon van Leeuwen en zijn bedenckingen over de stadt-houderlijcke magt" in his *Verspreide geschriften*, vol. viii (The Hague 1903)

p. 95–113; Paquot, Jean Noel, *Mémoires pour servir à l'histoire littéraire des dix-sept provinces des Pays-Bas*, 18 vols. (Louvain 1764) vol. iv, p. 391–400; Wessels, J. W., *History of the Roman-Dutch Law* (Grahamstown, Cape Colony 1908) p. 306–15.

LEFROY, AUGUSTUS HENRY FRAZER (1852–1919), Canadian jurist. Lefroy taught law at the University of Toronto from 1900 to 1919. He sought to instil a spirit of scholarship into legal study in Canada and as editor of the *Canadian Law Times* from 1915 to 1919 secured articles by the outstanding legal writers abroad. His reputation rests on his pioneer systematization of the law in the field of the distribution of legislative power in the Canadian federation and on his attempt to ascertain the trends of the law, which he regarded as highly flexible. With due regard to their authoritativeness he studied the decisions and dicta in the leading cases before the Canadian and imperial tribunals, the arguments of counsel, the reports of ministers of justice, American and Australian decisions and the discussions of other writers and worked out and illuminated broad principles of constitutional interpretation. But fundamental to all of them was his discovery as a legal philosopher of the rationale of the Canadian constitution in its combination of federalism with what he considered the freedom it provided for its own development in accordance with the growth of a young nation. Hence for its construction he regarded as of slight applicability American federal jurisprudence with its rigidity and its narrowing of the sphere of legislative power by express or implied reservations to the individual, by executive and judicial checks and by principles supposedly inherent in a federal system. The Canadian constitution, he held, must be interpreted as an act of the British Parliament; but as an act granting powers of government it must be interpreted liberally and the powers of the federal and provincial legislatures must each be considered plenary within its scope. Thus he really emphasized the powers of the provinces; he considered the disuse of the dominion power of disallowing provincial legislation merely in order to prevent allegedly unjust interferences with vested rights to be "a perfectly sound and natural development of constitutional theory," and he sought to extend the fiscal powers of the provinces into the field of indirect taxation. Other Canadian scholars have built upon Lefroy's work. Moreover, as he demonstrated that the dominion constitution was of both theoretical and practical interest for comparative jurisprudence, he was constantly consulted by experts on federal questions in other parts of the British Empire and in the United States.

W. P. M. KENNEDY

Important works: *The Law of Legislative Power in Canada* (Toronto 1898); *Canada's Federal System* (Toronto 1913); *Leading Cases in Canadian Constitutional Law* (Toronto 1914); *The British versus the American System of National Government* (Toronto 1891); *A Short Treatise on Canadian Constitutional Law*, with a historical introduction by W. P. M. Kennedy (Toronto 1918).

Consult: Kennedy, W. P. M., in *Canadian Law Times*, vol. xxxix (1919) 197–200.

LEFT WING MOVEMENTS, LABOR. *See* RADICALISM; SOCIALISM; TRADE UNIONS.

LEGAL AID. The ideal of modern law is fairness to rich and poor alike. But the latter are often at practical disadvantage and need special administrative help. In its broadest colloquial sense the term legal aid includes all such help. So far, however, as legal aid is spasmodic, casual, purely individual or administered as a minor incident to other forms of cooperation or relief it falls beyond the scope of this article. The treatment here deals with considered and organized efforts, both governmental and private, primarily intended to give the poor full benefit of laws existing either for their particular protection or for protection of the populace in general.

Problems of legal poor relief are old, pervasive and persistent. At scarcely any time or place in the development of civilized society has it been possible for indigent persons unaided to maintain their rights. Special provision for them in litigation appeared on the Twelve Tables of the Roman Republic. English law for not less than eight hundred years has at least purported to give poverty stricken litigants peculiar and necessary privileges. A Scottish law of 1424 dealt with the plight of "ony pur creatur that for defalt of cunnyng or dispense can nocht or may nocht folow his cause." In Spain during the time of Ferdinand and Isabella poor prisoners were systematically supplied with advocates at the public expense. The *Book of the General Lawes and Libertyes concerning the Inhabitants of Massachusetts*, published in 1648, contains the brief suggestion of a plan patterned after the current English practise. In modern times the need for legal aid increases enormously as industrialism and urban conditions replace simpler ways of living. Litigious collisions multiply and legal

technicalities persist. Particularly in the United States immigration, introducing millions of impecunious persons unaccustomed to and often entirely unfamiliar with existing law and usages, has made this need intense and very difficult to supply. New York and Chicago, great cities largely built up by immigrants, produced the earliest American legal aid societies. During the present century attention has been directed to legal aid as never before, and despite the disrupting influence of the World War the movement has gained ground the world over.

The difficulties with which legal aid is designed to grapple are sufficiently obvious. A poor litigant may be helpless to initiate or defend a suit because he has no money to satisfy court fees or taxes on legal process; because he cannot give security for costs or appearance; because he cannot pay for collecting evidence or summoning witnesses; or, most common of all, because he cannot afford a lawyer. Indeed such a person without contemplating litigation may from lack of sound professional advice never discover what are his legal rights, may fail in an effort to make a simple conveyance or draw a simple contract, be cheated by a more knowing man or even with no evil intent run afoul of the criminal law. A well rounded legal aid organization does much more work outside the courts than in them. Its great effort is to keep its clients clear of trouble or to settle their difficulties by conciliatory proceedings.

Historically, however, the legal aid movement was first related to litigation. Practical abolition of unjust litigation involving the poor is to some extent possible. For instance, the Massachusetts law providing an easily enforced criminal penalty for refusal to pay wages has reduced actions on liquidated wage claims to the vanishing point. But solutions so nearly ideal are rarely achieved. The most thoroughgoing relief tends rather to lie in procedure so simple and free from expense that poverty will be no bar and technical assistance superfluous. In England this sort of remedy can be traced down from the ancient bills in Eyre through the original Court of Requests (called at first the Court of Poor Men's Causes) into the later courts of requests and the efficient modern county courts. Small claims courts have been set up in some of the European countries and during the last twenty years in many states of the United States. Workmen's compensation boards furnish another means of special relief. While such relief is started and maintained with a special eye to needy litigants it tends for reasons of practical convenience to include all cases of certain types or within certain money limits. This theoretical democracy of remedy, up as well as down, frees such tribunals from the delay inevitable if each claimant must establish poverty as a condition precedent to a hearing on the merits. Thus they are more easily accessible to the poor, for whom they are intended, than ordinary courts can be under *in forma pauperis* procedure. Moreover in them suitors benefit from judges or commissioners with the skilled insight of specialized experience. Unfortunately, however, it has not been and probably never will be possible to handle in this manner all the business of indigent litigants. Indeed even a small claim may require lawyer's help for proper presentation, and such vitally important matters as workmen's injuries often demand expert witnesses as well. So for a complete scheme of legal aid these particularized tribunals must be supplemented by relief in courts of general jurisdiction and by assistance from other sources.

Poor men's access to the ordinary courts has offered a problem somewhat differently handled by different nations. In general the common law countries have avoided elaborate legislation on the topic. Some of the states of the United States indeed entirely lack such legislation. Many countries of Europe and of South and Central America, on the other hand, have legislated in detail. In Germany and still more in the United States organized private activity has been very important, while many other nations rely chiefly upon official or semi-official agencies in supplying the necessary legal aid in cases before the ordinary courts. Diversity of approach, however, does not indicate diversity of problem. Exactly the same administrative and judicial perplexities have been encountered wherever legal aid has attained anything like mature growth.

Of these the first is a double problem of selection. Persons with means masquerading as poor men must be prevented from stealing undeserved relief, and individuals with baseless claims or defenses should not, in Francis Bacon's apt phrase, "become rather able to vex than unable to sue." Fatal crowding of the courts for lack of proper selection wrecked certain early relief plans, and every modern legal aid system in some fashion tests applicants' needs. Quick testing is essential, for to those with small means justice delayed is emphatically justice denied. It has proved wisest neither to risk belated action nor to impede ordinary judicial functions by loading this preliminary task directly on the judges. So under the

sounder selective schemes outside help is enlisted. The determining body may be a lawyer's committee, as in England; a commission connected with the court, as in Italy; or what amounts to a separate tribunal ad hoc, as in France. In the United States from lack of proper official arrangements the effective determinations are made for many purposes by voluntary legal aid organizations. Need of celerity has sometimes led to rigid standards of poverty little above the line of destitution, as under the old English practise. In present day England certain property and income limits are set for ordinary circumstances and more liberal limits for special circumstances. Continental countries more flexibly define "poverty," a usage theoretically sounder and apparently not impracticable. In Austria and Scotland it is the practise to require as evidence of applicants' means certificates from local governmental or church authorities. Occasional necessity of special investigation is usually recognized.

Decisions in civil cases as to whether or not financially deserving applicants have reasonable grounds for litigation are made contemporaneously with or as quickly as possible after determinations of poverty and normally by the same officials or committees. Where litigious legal aid extends to criminal matters, it is not customary to require from accused men preliminary showings that they have meritorious defenses. The public duty of protection from unfair treatment obviates this feature of the process. But it should be remarked that in New York City under the guidance of intelligent, honest lawyers from the Voluntary Defenders Committee most poor criminal defendants admit their guilt by formal plea. It still remains for counsel to ascertain that judges are adequately advised of considerations relevant to fixing penalties. This legitimate settlement of criminal cases has its analogue on the civil side. Investigation of the merits of a client's claim usually involves consultation with the opposing party, and these consultations are employed for conciliatory ends. European and South American laws (e.g. in Argentina, Brazil, Italy, Monaco and Sweden) explicitly require that conciliation be attempted. Disinterested mediation is a valuable substitute for or supplement to official conciliation tribunals. How much work is saved the ordinary courts may be judged by the fact that the Legal Aid Society of New York has obtained pacific settlement in something like nine or ten times as many cases as it has litigated. And it may be added that one of the chief aims of organized legal aid in the United States is the establishment of effective conciliation courts or boards.

The ordinary consequences of a grant of legal aid are, first, remittance of some expenses and assistance with respect to others and, second, furnishing of professional advice and assistance either gratuitously or at nominal cost. The expenses involved in a civil suit, aside from lawyers' compensation, take three distinct forms. First come court fees: charges for entering or docketing a case, for service of process, for filing subsequent papers, and other related demands, often including taxes on judicial proceedings. Second are costs; that is, sums payable to an opponent who wins an interlocutory or final victory. Potential liability for costs often manifests itself by a requirement that security be given. Third are miscellaneous expenses such as those involved in searching for and summoning witnesses, taking depositions and obtaining copies of public records for evidential purposes. The appropriate authorities, legislative or administrative, may provide effectively for remission of taxes, term fees, entry fees and the like. Nothing more than the simplest ministerial action is required, and only extremely bad administration will in this respect impose peculiar handicaps on a poor suitor forced to proceed gratuitously. Likewise provisions for remission of costs or security are common and perfectly workable. In criminal proceedings these matters still less often cause trouble, because those accused are not usually called on for such expenditures, at least in advance. But in civil and criminal cases alike serious difficulty arises where legislation or court order directs officials dependent upon fees to perform for poor people uncompensated services involving discretion and energy. It is only natural for a sheriff or constable to shirk serving a writ or witness summons, making an attachment or levying an execution at the unremunerative behest of a needy person. Nor is it often practicable for the individual granted legal aid to overcome the officer's reluctance through governmental pressure. Neither of course can mere remission of court charges save the poor litigant from miscellaneous expenses contained in the third category above.

As a result a number of countries—e.g. Austria, Czechoslovakia, Hungary and Sweden —have arranged that fees to officers and witnesses, costs of notifications and other necessary expenditures shall be provisionally defrayed by the treasury, in contrast to the English practise

of requiring in certain cases advance deposits by poor persons. Belgium has an alternative arrangement: to leave fees and charges outstanding in the first instance, compelling payment by the opposing party if the poor person is successful. Where the treasury makes advances, these are collected in appropriate circumstances from the opposing party or under some laws from the beneficiary himself if the financial conditions requisite to legal aid cease to exist. American experience indicates that even generous expedients of this type cannot in very small cases assure uniformly assiduous service by court attachés. But they are far better in every practical way than mere general commands to perform official duties without recompense.

Much more serious hindrances have been encountered in the effort to furnish deserving poor litigants with proper professional assistance. Of all the factors in a legal aid scheme this is probably the most important. Given a supply of capable lawyers, marked success can be obtained without other contributing assistance. To illustrate with a case from the United States: Massachusetts now has no surviving statutory provisions or common law practise with regard to legal aid in her ordinary civil courts. But the city of Boston contains one of the best American legal aid societies, and the poor of that metropolis have their legal rights relatively well safeguarded.

Generally speaking, three administrative plans have been tried. The first involves reliance upon volunteers or unpaid lawyers assigned to cases by court order or some other method; the second, reliance upon governmentally compensated lawyers, either assigned to or chosen by poor litigants; the third, reliance upon professionalized legal aid lawyers. In a specific community aspects of all three plans are now likely to appear simultaneously. This facilitates comparison and has led to definite conclusions about relative merits. The volunteer or unpaid assignment plan is a failure. Adverse critics of the legal profession point to the great charitable service given by medical men and condemn the lawyers as mercenary. But the comparison is unfair. Diseases are common in type, if not in distribution, to all financial strata of mankind. A physician, whether general practitioner or specialist, is as capable of treating the poor as the rich. The rich man's litigation, on the contrary, is entirely different from that of the poor. A counselor well qualified to conduct a great will contest or to advise a powerful corporation might botch a workman's compensation case or a small wage collection. He has in a sense lost the common touch. So any scheme based upon casual gratuitous legal assistance to the poor meets the horns of a dilemma. Either unqualified lawyers will be pressed into service or the whole weight of this charity will be cast on the shoulders of practitioners whose low earning power least enables them to bear it. It is true that in small communities, where all lawyers have miscellaneous practises, fairly effective charitable rotation may be worked out. Legal aid, however, is a mass metropolitan task and must succeed in great centers of population. The same consideration serves to answer the suggestion that kindly individual lawyers in large cities couple competency with willingness to work for the poor. Individual effort cannot promise continuity, scope or thoroughness to meet the serious and growing need.

A scheme for assigning compensated lawyers chosen fairly broadly from the ranks of the profession does not escape the more serious criticisms outlined above. Compensation cannot be liberal without imposing an undue drain upon either the public treasury or, if fees be made contingent and payable from the fruits of success, upon recoveries by indigent suitors. The cost in lawyers' time of handling a ten-dollar case may be the same as in handling a thousand-dollar case. Thus the expenses of thriftily managed legal aid organizations in the United States during 1930 equaled 62 percent of the sums collected for clients. Under an assignment scheme then there is difficulty in obtaining by any practicable payments service both expert and vigorous, and distinct risk—particularly in criminal matters—that the assignments will drift into the hands of practitioners whose moral character is not high.

Such difficulties have become apparent in the actual operations of volunteer or assignment systems on the continent and in England and the United States. A common sequel of dissatisfaction with these systems has been stimulation of private legal aid organizations. Germany early developed private as well as municipal legal aid bureaus. In the United States especially during the last fifty years and partly under the impulse of German experience there has grown up, to fill gaps in a carelessly conceived and wretchedly articulated set of official schemes, an admirable, widespread and strongly cooperative body of voluntary associations supported by contributions from the bar and the general public. The earliest legal aid society was organized in New

York City in 1876. The great bulk of American legal aid lawyers are now salaried specialists devoting their time exclusively to this kind of practise. They have developed very effective operating techniques. In 1930 their money collections for clients aggregated $876,447. Since much service unconnected with money recoveries is constantly given, statistics relating to numbers of cases are more illuminating. Beginning with 1 city and 212 cases in 1876 the work had expanded in 1900 to 3 cities with 20,896 cases, in 1909 to 6 cities with 48,212 cases and in 1916 to 35 cities with 117,201 cases. The World War caused curtailment. In 1919 there were 23 cities with 109,048 cases. In 1930 some 65 cities produced a grand total of nearly 218,000 new cases. Successful operations by these societies have caused sounder extension of governmental agencies. Public defenders now exist in a number of states, and some municipal legal aid bureaus are doing helpful work. A number of European and South American countries, either spontaneously or following the lead of Germany and the United States, are maintaining and expanding private legal aid institutions.

Private activity has had another important general effect. Initially attention in England was fixed upon the need of helping indigent folk wage lawsuits successfully. The idea of giving them legal advice entirely apart from litigation or with a view to avoiding litigation gained little notice. A pugnacious philosophy of legal aid grew up which has cramped fully rounded development to the present time. In the United States legislation was even more constricted, but a broader philosophy prevailed from the foundation of the first legal aid society. Advice was given, wills and contracts drawn, settlement of disputes assisted. While perhaps in no other country has the official system been so narrow as in England and the United States, there has been discernible, at least in earlier governmental plans, an inclination to focus upon litigation. Now, however, this is changing. More and more the public schemes are furnishing adequate consultation and drafting facilities. The most recently and perhaps the most intelligently worked out of the European plans, that adopted by Sweden since the war, provides an interesting comparison with the preponderantly private American plan. Publicly supported Swedish institutions offer not only lawyers for court work but mediation, explanations, advice, draftsmanship and assistance in the various branches of notarial business. Also with respect to litigation a healthy competitive device was created by carrying over (from an earlier inadequate assignment system) provisions permitting appointment for poor litigants of legal representatives not connected with the public legal aid bureaus. A litigant himself is allowed within reasonable limits to choose his representative, who receives suitable remuneration from the public treasury. This competition has elevated the standards of regular legal aid lawyers and lessened popular hesitancy to accept their services.

No less important than sound procedure is articulation of the legal aid movement both internally and with other social services. Nation wide organization is perhaps most vividly exemplified by developments in the United States after 1917, when for the first time definite support was obtained from the bar of the country as a whole. Since that date many state bar associations have formed legal aid committees and the American Bar Association has brought into operation its standing committee on legal aid work. Even before the war the various American societies, following the example set by similar German organizations, had held conventions and entered a loose national alliance. This alliance suffered from inherent weaknesses and became moribund about 1916. In 1923 the present vigorous National Association of Legal Aid Organizations replaced it. Through this later unifying body the societies and bureaus have been coordinated. Reference of cases from one locality to another is now facilitated, and the general progress of the work has come under wiser control.

Legal aid has also come to be at least partially organized on an international basis. In 1905 the Hague Convention on Civil Procedure outlined reciprocal possibilities, which have since been followed up by numerous treaties. In 1924 the League of Nations conducted a conference at which the following nations were represented: France, England, Norway, Italy, Poland, Spain, the United States and Japan. Communications were received from the Austrian government and from the German Bar Association (Deutscher Anwaltverein). One consequence of this meeting was the League's publication of a volume containing collected laws and a list of legal aid organizations the world over. The peculiar difficulty of obtaining justice for poor persons in countries other than their own is being distinctly lessened.

There has always been some connection between legal aid and general social service. Some laws, as, for example, those of Argentina, direct

defenders of the poor to visit prisons, penitentiaries, hospitals and reformatories, receiving complaints and making reports and suggestions. Much poor relief in legal matters has been launched and indeed is still regularly conducted by charities also working in different fields. But the lawyers' characteristic aloofness is not easy to break down and, while considerable progress has been made toward linking legal aid effectively with other relief agencies, it is certain in the United States and probable in many other countries that much greater advances are yet to be accomplished.

The significance of the wide legal aid development in modern civilization is very great. It has progressively bettered the condition of the poor, increased their understanding of law and willingness to conduct themselves lawfully and corrected unwise revolutionary inclinations. Fair minded legal aid lawyers have again and again changed for the better the attitude of employers to employees. Efficient legal aid unquestionably increases the public prestige of bar and bench alike. The movement gives considerable opportunity for training young lawyers, sometimes even during the course of their studies. It will combat more and more effectively such abuses as extortionate contingent fee arrangements. Finally, one of its most important possibilities, already amply manifested in the United States, is furtherance of wise law reform by recommendations based upon exceedingly broad observation of the practical results of existing substantive and procedural rules. Legal aid may well be one of the decisive factors in successful social adjustment.

JOHN MACARTHUR MAGUIRE

See: JUSTICE, ADMINISTRATION OF; PROCEDURE, LEGAL; LEGAL PROFESSION AND LEGAL EDUCATION; SMALL CLAIMS COURT; PUBLIC DEFENDER; WORKMEN'S COMPENSATION.

Consult: Parry, E. A., *The Law and the Poor* (London 1914); Smith, R. H., *Justice and the Poor*, Carnegie Foundation for the Advancement of Teaching, Bulletin, no. 13 (New York 1919); Reports of the Committee on Legal Aid Work appearing annually since 1922 in American Bar Association, *Report of the Annual Meeting*; National Association of Legal Aid Organizations, *Record of Proceedings at the Annual Meeting*, published annually since 1923; Maguire, J. M., "Poverty and Civil Litigation" in *Harvard Law Review*, vol. xxxvi (1922–23) 361–404; Smith, R. H., and Bradway, J. S., *Growth of Legal Aid Work in the United States*, United States, Bureau of Labor Statistics, Bulletin, no. 398 (1926); Gurney-Champion, F. C. G., *Justice and the Poor in England* (London 1926); American Academy of Political and Social Science, *Annals*, vol. cxxiv (Philadelphia 1926); League of Nations, *Legal Aid for the Poor*, 1927. V. 27 (Geneva 1927); Joint Committee for the Study of Legal Aid, New York, *Report* (New York 1928); Maguire, J. M., *The Lance of Justice, a Semi-centennial History of the Legal Aid Society 1876–1926* (Cambridge, Mass. 1928).

LEGAL EDUCATION. *See* LEGAL PROFESSION AND LEGAL EDUCATION.

LEGAL PROCEDURE. *See* PROCEDURE, LEGAL.

LEGAL PROFESSION AND LEGAL EDUCATION

ANCIENT AND MEDIAEVAL.....H. D. HAZELTINE
MODERN LEGAL EDUCATION.....MAX RADIN
MODERN LEGAL PROFESSION.....A. A. BERLE, JR.

ANCIENT AND MEDIAEVAL. The legal profession has been intimately connected in all societies with the rise and development of legal systems. It has been pretty well established that the development of a system of law "has never taken place except through the formation of a professional class—whether that professional class be religious or secular, official or unofficial" (Wigmore). In primitive groups the personal dispensation of justice by a chief seems never to have produced a true system of law. Only with the appearance of a professional class has there been a transition from primitive personal justice to conditions in which a genuine legal system originates and develops. In Semitic history this transition is illustrated by the institution of judges in Israel; and the history of Rome offers an even more striking example of the development of a legal system through the work of lawyers.

As the creator of legal systems the professional class has not always been composed of lawyers in the sense of advocates. In theocratic societies the priests acted in this capacity; in Egypt and Mesopotamia the judges and the official clerks; in Greece the advocates and jurors; in Rome the judges, advocates and jurists; in mediaeval France and England the attorneys, advocates and judges. Where the legal profession develops as part of a religious hierarchy, as it has in Egyptian, Mesopotamian, Hebrew, Moslem and early Roman history, law, theology and morals

are intermingled and the corresponding offices are accordingly undifferentiated. Under such conditions the legal profession is a part of the general theocratic system and possesses a distinct theological and moral cast. In the case of the Roman Catholic church of the Middle Ages, which claimed both temporal and spiritual powers and was in essence a theocracy, the clergy formed in many respects a legal profession. Under many legal systems there are definite evidences of the transition from a theocratic or informal body of lawyers to a secular and professional composition. Thus Hammurabi took the general administration of justice from the hands of the royal priests and placed it in a body of secular judges; in mediaeval England secular judges and lawyers gradually displaced the ecclesiastics in the work of the common law courts.

The formal means by which a professional class has developed the law into a system have varied. Some legal systems have developed largely through enacted law. Others, like the Jewish, Hindu, Roman and English systems, have developed largely as the result of the reasoning of the professional class based on a study and comparison of cases. But the professional class under these "case system" regimes has not always been the same. In the growth of Jewish law the rabbis in their school teachings were the leading factors; in later Roman law the jurisprudents; in Hindu law the muftis, who possessed no priestly or official status; and in the English system the judges, assisted by attorneys and barristers.

The advocate occupies an important but by no means exclusive place in the history of the legal profession. In the oriental systems of law the professional advocate was lacking. In early Athens parties pleaded their own causes and no one was allowed to appear as an advocate unless he himself had some interest in the cause. Later, however, the rule was relaxed, and if a man was prevented by illness or other reason from conducting his own case, a relative or friend was allowed to speak in his behalf. There was nevertheless a class of men who, while they did not themselves appear in the courts, composed speeches for clients to deliver in their own causes. Distinguished men like Antiphon, Isaeus and Isocrates made this their ordinary occupation; and after Antiphon had set the example of accepting fees, they gained their livelihood by it. The advocate was important in the early and republican periods of Roman legal history, but in the Roman imperial era he was largely replaced by the jurist, to whom the molding of Roman law must be in large measure attributed. In the secular class of skilled elders—the "law speakers" or "law men"—of the Scandinavian systems there was a curious mingling of the functions of the partisan advocate and the judge. In the early Germanic law and in those mediaeval systems that grew up under marked Germanic influence there was a division of the functions of the lawyer between the *attornatus*, or *Anwalt*, who was the agent of the client to act for him in the winning or losing of the suit, and the *Vorsprecher*, who spoke the formal words for the client in court. This duality persisted, and its importance in the European systems of the later Middle Ages is attested by the history of the attorney and advocate in France and England. A somewhat analogous distinction existed in Roman law between the *cognitor*, who represented his client for all purposes, and the *patronus*, who interpreted the law and marshaled the evidence in his client's behalf.

The history of the Roman legal profession is of central importance because of the influence that Roman law has had on subsequent legal development. Ancient Roman law was based on a fundamental distinction between divine or sacral law (*fas*) and human or civil law (*jus*). Although distinct these bodies of law were both administered by the *collegium* of *pontifices*. The *pontifices* applied the same methods to both; in general their function in each, based upon their expert knowledge, was to assist the parties in their own performance of the required forms and ceremonies. In the realm of *fas* they were a sacerdotal official class, although the later conception of a priestly or spiritual order (*Geistlichkeit*) cannot be applied to them. In the realm of the civil law (*jus*) they assisted the parties in concluding transactions and in bringing or defending legal actions. Their expert and secret knowledge, going back, according to tradition, to King Numa and embodied in the written pontifical "archive," enabled them to play a leading role in legal life in a period when form was of predominant importance. The early Romans drew a sharp distinction between the law (*jus*) and its application (*actio*). *Jus* was customary law, an expression of the folk culture; the *actio* as the external crystallization of the law manifested itself in definite forms. Legal transactions required certain forms (*certa et sollemnia verba*) before they could be effective; when the law was broken, only recognized forms of *actio* could be invoked. The *pontifices* preserved these

forms in their archive. They regarded it as their function to apply the traditional *formulae*, wherever they were available, to the needs of the parties. Where no existing form fitted the needs of the particular case, they shaped a new one and added it to their archive for use in future cases. In this way their work represented the beginning of the Roman legal system.

Although the *responsa* which the *pontifices* gave were not judicial decisions but merely expert opinion on legal questions, they were accepted by the parties and the courts as authoritative because the *pontifices* alone knew the mysteries of the law. In the sphere of sacral law they long retained this monopoly. But in the civil sphere there gradually developed an independent legal system, the *jus civile*, linked in the later republican period to the growth of a legal profession and a legal science distinct from the calling and special knowledge of the *pontifices*. This development reached its culmination in the work of the classical jurists of the imperial era before Diocletian, whose achievement lay in the elaboration and refinement of the materials they received from the creative republican period. The age of codification that followed reached its most complete expression in the Justinianian law books. Thus the development of a secular Roman legal profession and system of legal education spans the centuries from the pontifical jurisprudence to Justinian.

The legal profession of the republican era was not a closed order or rank. In some of the leading families legal learning was preserved from one generation to another; but few Romans devoted themselves exclusively to a legal career. The pursuit of the law was treated as a matter of honor; its reward was the public influence or high office that came to the lawyer. His activity lay principally in formulating legal transactions according to the wording of the formulae and in giving *responsa* on legal questions, either before or during legal proceedings, at the request of parties, magistrates or judges. The "consultation" took place either in the house of the lawyer or at the Forum; sometimes the *responsa* were given in writing. Finally there was the work of advocacy. Cicero and Hortensius may be taken as representative of brilliant and successful advocates in Roman times. The genius of the advocate—*vir bonus dicendi peritus*, as Cato called him—consisted not only in forensic oratory but also in the careful preparation of his causes and in his devotion to the interests of his clients. *Jus* and *leges* were a part of Roman elementary education: both as the oldest Roman book and as a fundamental law the Twelve Tables were taught at school. While the law student read for himself the legal literature and the edicts of the magistrates, his only direct professional instruction was derived from attendance as *auditor* at the consultations held by a lawyer. The giving of *responsa* in public appears to have begun in the early part of the third century B.C.; to these *responsa* the legal education of the time was most closely related. Young men attached themselves to a well known and successful lawyer as his pupils, and thus there arose private law schools of a professional kind. But these schools of the republican era still lacked the organization of those in the days of the empire. Instruction was still chiefly practical in character, and there was no growth of distinctive principles separating one school of thought from another, such as that which marked the rise of the Sabinians and Proculians in later times. In general each lawyer-teacher made his own school; and the method which he followed was that of the disputation, which consisted primarily of a lecture in which the lawyer, giving a *responsum*, solved the problem in hand by one means or another—a form of instruction which can be studied in the writings of Gellius. In the earlier period the disputation served both as advice to the lawyer's clients and as instruction to his pupils. But with the growth of written opinions it assumed more exclusively the character of legal education; in fact cases were sometimes considered which had arisen in the practise of other lawyers.

There was also a more theoretical form of training. There were lawyers who gave instruction in the rudiments of jurisprudence to law students; often the same lawyer gave both practical and theoretical instruction to his pupils. Elementary instruction in theory, which came to be known as *instituere*, grew in importance and ultimately led not only to an emphasis on a theoretical training as an essential preliminary to practise but also to the development of a definite course of legal study. It was only in the era of the empire, however, that these tendencies resulted in the creation of professorships at law schools devoted exclusively to the education of the profession.

In the imperial era down to the end of Diocletian's reign the legal profession continued to hold the high place in public and private life which it had acquired in republican times. The emperors in their legislation regulated with minute care the rights, the privileges and the

duties of advocates. The status of advocate and the career of law teacher were distinguished. Legal education continued to be even more systematically developed than in the later republic, both in an accumulating legal literature and in oral instruction. In addition to the casuistic teaching at consultations and the disputations the more formal survey of the private law—known to the republican era as *instituere*—was further developed. While some of the lectures and disputations were limited to a scholarly audience, some were held publicly, so that anyone could be present and share in the instruction given. The public disputations seem to be identical with the *jus publice respondere*, which Gellius tells us took place at various *stationes* or public *auditoria*. The view is held therefore that some legal teachers were assigned public buildings, as was the case also in the teaching of rhetoric. But unlike certain of the rhetoricians, teachers of law did not receive a salary from public funds until the later empire.

Bremer points out that not only were the great classical jurists professors of law, but a large number of them—often the most eminent, such as Julian, Scaevola, Papinian, Ulpian and Modestinus—were provincials. Although Rome was still the center of the world, the provinces formed the most important part of the empire. The Roman law itself had changed: to the *jus civile proprium romanorum* there had been added the cosmopolitan principles of the *jus gentium*. The fusion of these two elements made a world system of the Roman law; and, as Bremer remarks, "in this process of transformation the jurists and the law teachers from the provinces without doubt took the leading part." In the earlier imperial period, ending with Diocletian, Rome was not the only center of legal study; for there were also several law schools in the provinces, where legal instruction was given in Latin, notably Beirut, Alexandria, Caesarea and Athens. In addition to these schools there were the schools of rhetoric which included law in their curriculum, and in which most of the provincial lawyers appear to have been trained. During the period from Constantine to Justinian there was a growing tendency to bring the law schools under the patronage and control of the state. In the early fifth century the two law professors at Constantinople were chosen by the Roman Senate and paid a salary by the state; the constitution of 425 forbade the professors at Constantinople to undertake private teaching and provided that only those appointed by the state could give public instruction in law: all others were allowed to teach only in private houses. The law teachers at Athens, Caesarea and Alexandria were not appointed by the state: these schools were suppressed by Justinian. In the latter part of the period the law teachers at Rome received salaries.

Founded at the end of the second or the beginning of the third century, Beirut became the most renowned of all the law schools of the Eastern Empire before Justinian. The creative period of the school extended from the early fifth century (410–20) to the reform of legal studies by Justinian in 533; in 551 it was destroyed by the great earthquake that ruined the city. Its creative period was the era of the "oecumenical masters," Cyrillus, Patricius, Domninus, Demosthenes, Eudoxius, Amblichus, Leontius, who in addition to their teaching made valuable contributions to legal literature. In this period Beirut was, in Mommsen's words, "a sort of Latin isle in the midst of the ocean of oriental Hellenism"; students flocked to it from many parts of Europe, northern Africa and western Asia. Greek replaced Latin for instruction toward the end of the fourth or the beginning of the fifth century. In the first half of the fifth century Beirut received from the emperor a *privilegium*, or charter, constituting it a state school; it thus formed with Rome and Constantinople the only schools officially recognized by Justinian. At Beirut in its earlier centuries as at other public schools of law the professors received only honoraria; the amount depended on arrangements between the professor and the students, but the professors had no legal means of recovery. In the fifth century the law professors at Constantinople and Rome received salaries from the state, and while the sources are silent about Beirut it would seem probable that when it became an official school state salaries were instituted. In the course of its development Beirut became the only creative law school in the world. Founded in the days of the power of the Western Empire as a Latin center of Roman legal study in the east, it gradually adapted itself to its environment of Hellenic culture; and, as imperial power moved from Rome to Constantinople, it labored for the transformation of the ancient and classical Roman law into the Greco-Roman law of the east. The school's work is enshrined in the Justinianian codification, that mixture of the classical law of Rome and the new law elaborated with so much skill and learning by the great fifth century professors.

In the fifth century at the latest attendance at a law school for a prescribed time and the obtaining of a professorial certificate became conditions of entrance into the profession of advocate; as a consequence legal instruction in the schools of rhetoric entered upon a decline. In the period before Justinian the prescribed period of study was four years. While stress was laid in the first year on the *jus civile*, in the second and third years the student also heard lectures on other parts of the Roman system, such as the Perpetual Edict; and in his studies he appears to have made use of several of the writings of the classical jurists. In general the lectures neglected those parts of the law which had ceased to have practical importance; and no attention was paid to criminal law and procedure. The fourth year was devoted to a private study of Paul's *Responsa*. At Beirut a voluntary fifth year could be devoted to advanced work, mainly concerned with imperial constitutions.

During the earliest period of Beirut the professors appear to have followed the methods of the Roman masters. But at the close of the third and during the fourth century after the publication of the great synthetic treatises of Papinian, Ulpian and Paul the program and method of instruction were changed, and the change was followed by the oecumenical masters of Beirut in the fifth century. The new method was didactic in character, *interpretatio*: it consisted in instructing the student in the doctrine of the classical jurists, but it did not exclude the casuistical aspect of the earlier method, the dogmatic exposition of the text being accompanied by questions put to the students. In the fifth and the early sixth century there was a further change: the professors at Beirut not only taught in Greek but adopted the "scholastic" method similar to that which had long been followed by Greek masters in the schools of rhetoric. This constituted the chief contribution to legal education made by the fifth century law professors of Beirut. The method consisted of an exegesis based on passages or words in the texts of the classical jurists. The professor commented on the text and glossed passages or words with brief explanations; he drew attention to what the jurist had said in other parts of his work; he tried to reconcile the views of the jurist under consideration with those held by other jurists; he mentioned the passages in the three ante-Justinianian codes (Gregorian, Hermogenian and Theodosian) which bore on the subject matter; he expressed his own views, which were sometimes those that he had already given to clients; he set out a case (*casus*) and, relying upon a text, announced his solution; he drew from a text, or he himself formulated, a general rule (canon), inviting the students to consider it; he gave precise references to authorities and also advice on reading. Mingled with the exposition were the questions put to students and their answers, a practical exercise known as *praxis*. This scholastic method was to influence the work of the Italian law schools in the Middle Ages and forms a close link between eastern and western jurists. On the completion of their work at the law schools many of the students became practising lawyers; many others entered upon judicial or administrative careers; a limited number became professors of law; some entered ecclesiastical life. Justinian's constitution *Omnem* enumerates several of the careers open to students who had made a study of the Digest: *oratores maximi* [advocates] *et justitiae satellites* [assesors] . . . *et judiciorum optimi tam athletae* [judges] *quam gubernatores* [governors] *in omni loco aevoque felices*.

Justinian's epoch making codification of the Roman law was accompanied by a reform of legal studies. With the publication of the Digest in 533 the emperor (in the constitution *Omnem*) modified the curriculum in order to make it comply with the new law. He prescribed the order in which the Institutes and the various books of the Digest were to be studied and commented upon in the three years of lectures. These were to be followed by two years of private study, probably supervised to some extent, in which there was study of the *Codex* and further study of the Digest. The details of administration in the schools were prescribed by the emperor even to the extent of the names or titles which the students of each year were to bear, the festivities that were to accompany a student's entry into his third year of study and the prohibition of demonstrations against professors or newly entering fellow students. Justinian also prescribed the methods of instruction, attempting to simplify them so as to keep the teachers from destroying the harmony of his codification, which he regarded as perfect and definitive. Instruction was accordingly to consist of translation, a résumé of the fragments of the Digest and in addition only certain references. Justinian's instructions were, however, too exacting and absolute; and there is clear evidence that they were not rigorously respected at Beirut and in the other schools of law.

With the fall of the western provinces of the empire and the rise of the Germanic kingdoms European legal education entered upon new phases of development. The reduction of the Germanic codes to writing introduced a practical legal science, but in the Frankish and Lombard periods the state paid no attention to schools; apart from the school at Rome, which continued its work, there were no specialized schools of law. Legal education was in the hands of the practitioners; judges and notaries became teachers of law and preserved the traditions of their profession by instructing their successors. In the Carolingian period law found a place under dialectic at the end of the trivium, but with the break up of the Carolingian empire Charlemagne's educational work was largely undone. Under the Ottos, however, there began new educational movements, which culminated in the celebrated law schools of Italy. Schools of Lombard law arose at Milan, Mantua, Verona and notably Pavia. The school at Pavia emerged gradually out of a system of practical apprenticeship—practitioners were at the same time teachers and the judiciary was recruited from them; it rose to great prominence, and Roman law was added to the Lombard law in the scheme of study and instruction. With the rise of the school of Roman law at Ravenna the old school at Rome entered upon a decline. At the end of the eleventh century Ravenna was flourishing. In the twelfth century as part of the general renaissance of ancient learning Bologna began its brilliant career as a school of Roman law under Irnerius, its founder. Adopting the method of the gloss, or textual interpretation, from Pavia, where it had been used in dealing with the Lombard law, Irnerius applied it to the Justinianian law books. There was also a school of canon law at Bologna, founded by the work of Gratian early in the twelfth century and using the gloss method. The brilliant achievements of the great Bolognese teachers, civilians and canonists alike, in the period both of the glossators and of the commentators drew students from all parts of Europe; and returning to their own countries they founded schools of law throughout Europe.

Although the Italian schools were dominant in the movement, the revival of legal studies spread to other countries. The mediaeval universities of Montpellier, Toulouse, Orléans and Paris became prominent for their legal education in both the Roman and canon law; but in France as in Spain, England and other countries the native laws and customs were not studied at the universities until much later. There was legal instruction at the University of Salamanca, founded early in the thirteenth century; in 1348 the first university in the Holy Roman Empire was founded at Prague; before the close of the fourteenth century universities were established at Vienna, Heidelberg, Cologne and Erfurt; in the fifteenth century ten more German universities were established. In these German universities only canon law was taught at first; generally Roman law was not introduced as a subject of study until the second half of the fifteenth century. At Paris in fact a ban on the teaching of Roman law, placed in 1219 by Honorius III, was confirmed in 1312 by Philip the Fair and was not lifted until 1679. The introduction of the Roman law in curricula throughout the continent facilitated its reception and the growth of a learned legal profession. In England before the close of the twelfth century there was a law school at Oxford and possibly at Cambridge. From the thirteenth century, when both schools were flourishing, down to the reign of Henry VIII Roman and canon law were studied and degrees conferred, but Henry VIII abolished the faculty of canon law and founded a chair in civil law at each university.

The purely exegetical method of the glossators, applied in both teaching and writing, was pushed to the extreme. The glosses of one jurist were themselves glossed by another. The postglossators in their reaction against the gloss adopted a method of scholasticism and developed a fine spun logic alien to the spirit of the mediaeval renaissance. In France the glossators were eclipsed in the second half of the thirteenth century by the school of Jacques de Révigny, professor at Toulouse, who adopted the scholastic method and whose disciples began to apply to the law the dialectics which Thomas Aquinas had used in theology: they sought for general principles and by reasoning deduced all the corollaries. The scholastic method of the postglossators long dominated legal teaching and legal literature in Europe, even after the rise of the legal humanists in the fifteenth and sixteenth centuries.

The legal profession in mediaeval Europe was molded by broad historical forces. In some regions where Roman culture had been most firmly intrenched there was a continuity of the Roman legal tradition and a consequent revivification of features of the Roman legal professional system. The role of the Catholic clergy in

the professional life of the Middle Ages must also be taken into account. The church developed a legal profession of its own; in addition there were the lay *defensores ecclesiae*, known in the African church as early as the beginning of the fifth century and also in Italy; in Frankish Gaul in the sixth century they were called *advocati* and assisted the bishops and abbots in legal processes. There was finally the influence of Germanic institutions, as shown in the sharp distinction between the attorney and the advocate, so marked in some mediaeval professional systems. In Germany the university law schools were founded later than many of the great schools of Italy and France and could base their methods and studies on the experience of those schools. The early German schools were primarily ecclesiastical institutions: the professors were mostly clerks in holy orders, training men for the spiritual and administrative work of the church. Canon law was therefore the principal subject studied; only gradually because of the growth of humanism and the increasing adoption of rules of Roman law by the courts did Roman law acquire in the second half of the fifteenth century a position of equality with canon law. The native law, being a *jus incertum* and ill adapted to the exegetical method of the teachers, fell outside the scope of the curriculum. The German schools trained a learned and secular legal profession, which gradually displaced the clergy in the councils and activities of the state. This rise of the legal profession to a position of power is one of the main features of the history of church and state in Germany in the period before the Reformation. In France and England the growth of a secular legal profession meant not only the replacement of the clergy by lawyers in the service of the state but also the firmer consolidation of monarchical power in opposition to the power of the church. The lawyers played a most influential role in the vast process which led to the decline of the Roman Catholic church as a world wide state.

The French legal profession of the Middle Ages was composed of advocates (*avocats*) and attorneys (*procureurs*). Like the modern French attorneys (*avoués*) the *procureurs* represented the parties before the courts, whereas the *avocats* merely assisted the attorneys. The rise of the attorneys was slow. Under the early system of procedure, which was oral and formal, private individuals were obliged to appear as parties in their own name and person. In the Frankish epoch representation was allowed only on the king's special authority, while in the feudal age *lettres de grace* were necessary. In the procedure of the church courts the prohibition upon the use of representatives did not obtain. Although the prohibition as to French courts was not finally abolished by ordinance until 1528 it had ceased centuries earlier to have any force in practise. With the growth of complexity in procedure, accompanied by the gradual adoption of documentation in place of oral proceedings, appearance before courts became a difficult art which required learning. From the middle of the thirteenth century employment of attorneys was more frequent; and representation, ceasing to be a privilege, became a right. Corporations of men who accepted mandates *ad litem* were formed; and in the fourteenth century the profession of attorney (*procureur*) was regulated by ordinance. The profession was limited in respect of number; an oath was required and a tariff of fees was prescribed. An attorneyship became an office, which was originally purchasable; and the assistance of attorneys, except in the inferior courts, was made compulsory. At least in the courts of lower instance the attorneys could act as advocates and even as judges; but attorneys did not enjoy the social consideration possessed by advocates (*avocats*). In the middle of the fifteenth century business agents (*solliciteurs*) frequently directed suits for parties, paying both the *procureurs* and the *avocats*. In the revolutionary period the title of *avoué* was substituted for that of *procureur*; and although for a time *avoués* were replaced by agents provided with a certificate of citizenship, they were reestablished by a law of 1800.

The corporations of advocates of the Lower Empire disappeared with the Germanic invasions and were replaced after the ninth century by the "fore speakers," or *prolocutores*; but about the end of the twelfth century they again arose as auxiliaries of justice in the church courts and later in the French *parlements*. These corporations of *avocats* enjoyed the monopoly of pleading before the *parlements*. Beginning in the thirteenth century the ordaining power and the *parlement* developed a special set of regulations for *avocats*, prescribing the conditions of their licensing and the limits of their charges. *Avocats* were not restricted to pleading but could give advice and prepare legal papers; they were classified as pleaders, consulting barristers and novices or licentiates. Disciplinary power over *avocats* was at first vested exclusively in the ordaining authority and the *parlement*; but with

the rise of *avocats* as an order at the end of the fifteenth and in the sixteenth century disciplinary power was at least partially transferred to the council of the Order of Advocates. The custom, based on Roman and feudal origins, of the "assignment of counsel"—the designation of advocates by the court because the suitor did not know an advocate or for other reasons—ceased completely in the sixteenth century because of the large number of advocates available. Their honoraria could be recovered by judicial process; and the ordinance of 1274, which prescribed a maximum honorarium of thirty livres, was not in fact enforced. In the revolutionary period the Order of Advocates was abolished (1790). Each litigant was left to plead his own cause or to choose someone to represent him or to have recourse to an "official defender" (1791). In the year XII the roll of *avocats* reappeared; and in 1810 the Order of Advocates was reestablished with a monopoly of pleading.

In mediaeval France the university law schools gave the profession its training in legal principles. That training was in the Roman and canon laws, not in the native laws and customs of France. The methods of instruction chiefly applied, in the order of their historical appearance, were the exegetical method of the glossators, the scholasticism and dialectics of the postglossators and the humanism of the Renaissance jurists. But while humanism exercised an influence on legal education in the fifteenth century, it was not until the sixteenth that this movement, represented by the school at Bourges and by the jurist Cujas, largely supplanted the earlier methods of teaching and study.

In England in the thirteenth century a secular legal profession was being formed. In the previous century there had grown up an ecclesiastical "bar"—legists and decretists, who had been trained at university law schools, found ample employment in the maze of ecclesiastical litigation. In the bishops' courts a distinction was recognized between the procurator (or proctor), who represented the client and took care of his case, and the advocate, who pleaded on the client's behalf. The secular profession developed along the same division between the attorney and the pleader (*narrator*, *counteur*). While at first a royal writ was needed to appoint an attorney in court, under Henry III this was required only for a general attorney and under Elizabeth not at all. Even as late as Henry III the attorneys were not professional; but partly because of the control which the court exercised over them some degree of professionalization took place under Edward I; attorneys could be sued for fraud and negligence. By the time of Edward II the rule was established that no attorney should follow the pleader's profession. In the late thirteenth and the early fourteenth century there were the beginnings of professional staffs of attorneys attached to the three common law courts; and thus there set in the historical process by which attorneys became "officers of the court" which appointed them. This process definitely separated the function of the attorney from that of the pleader.

In the twelfth and thirteenth centuries, when a large number of men made a profession of civil and canon law, many pleaders in the king's courts were clerks in holy orders; but this participation of the clergy in lay jurisdiction was discouraged by the Lateran Council, which prohibited them from acting as advocates in secular courts except in causes wherein they were themselves concerned or in causes of poor persons. The early *Year Books* show that in the thirteenth and fourteenth centuries a professional class of pleaders was taking shape and assuming a prominent part in the development of the common law. In this period a distinction was growing up between two groups of pleaders—the serjeants and the apprentices. The pleaders who clustered about the king's courts, some of whom were employed in the king's litigation, were called his serjeants (servants) at law. They were a small group who did most of the work of the court and they formed a closed order that lasted, in form at least, down to very recent times. There were also the apprentices, who intended to follow the profession of law. While in these early days the serjeants may have been responsible for the training of the apprentices and the selection of those who could practise in the courts, the system did not develop along these lines.

The rise of professional attorneys and pleaders in the thirteenth century began to have an important influence on the constitution of the common law bench. Both the pleaders and the attorneys came under the control of the judges. The early courts of common law had been recruited from the staff of royal administrators and ecclesiastics; but with the rise of the profession of pleaders the tendency grew to appoint common law judges from among them—in other words, from the bar rather than from the attorney class. The practise also became fixed of

recruiting the bench only from those pleaders who had risen to be serjeants at law.

During the fourteenth and fifteenth centuries the legal profession organized itself into its classic forms; and the monopoly of legal business which the profession as thus organized secured determined much of the character of common law developments. The serjeants at law and the judges, being at the head of the legal profession, exercised in several ways a general control over it. By the end of the fourteenth century the serjeants, selected by the king usually on nomination by the bench, constituted a close body in the nature of a guild; it had become the rule that only serjeants were eligible for appointment as common law judges; and their main privileges seem to have come into existence in this period. Their calling was viewed as a public office, as clearly appears from the oath which serjeants elect were required to take. Their entrance into their new rank was attended by long and costly ceremonies, in comparison with which the creation of a judge was an informal affair.

The serjeants and the judges were all brothers of the Order of the Coif and they lodged together in the Serjeants' Inns. Both in the judicial system and in society the serjeants held a position second only to the common law bench itself. They could practise before the council and the chancellor as well as before all the common law courts. Plucknett holds that the *Year Books*, the English mediaeval law reports, "are peculiarly and intimately connected with the order of serjeants"; that they were a series conducted under the direction of serjeants and for their use. Counsel in this period dealt directly with their lay clients; contracts with counsel were enforceable at law; and they could be sued for negligence in the conduct of their clients' cases.

Their common profession and common privileges formed the bonds uniting the serjeants at law in the Order of the Coif, which was comparable with the foreign guilds or fraternities of lawyers of the later Middle Ages. The serjeants and the judges stood apart at the head of the profession. The other members gradually organized themselves into the Inns of Court and the Inns of Chancery; in these Inns the serjeants had no part. The origins of the Inns of Court, to which the Inns of Chancery were attached or annexed, are lost in obscurity; but it is now known, says Sir Frederick Pollock, that at some time in the fourteenth century, probably in the first half of it, "the four Inns of Court, voluntary societies unchartered and without corporate form, existed with closely similar constitutions, essentially such as they are now." The four Inns of Court were Lincoln's Inn, Gray's Inn, the Inner Temple and the Middle Temple; and it was the lesser Inns, about ten in number, which were known as Inns of Chancery. The mediaeval universities, Oxford and Cambridge, taught only civil and canon law; but for the teaching of English law the Inns of Court themselves formed, in Coke's words, "the most famous Universitie for profession of law . . . in the world." In the Inns the profession organized and educated itself; and by the middle of the fifteenth century these societies were in a flourishing condition. Membership of the Inns of Court consisted in the fourteenth and fifteenth centuries of several different classes or grades. There were, first of all, the "benchers" and "readers"; below them came the "utter-barristers"; then there were the youngest members, the "inner-barristers"; while in addition professional attorneys and clerks of the courts were also members in this period. In the fourteenth and fifteenth centuries the usual term for members of the bar (that is, pleaders) below the grade of serjeant was "apprentice"; and only after the Restoration was it supplanted by "barrister," which, properly speaking, signifies a man's standing within his Inn of Court. The term inner-barrister has long been superseded by "student." The organization of apprentices in the Inns of Court during the fourteenth and fifteenth centuries caused the later distinctions between students, barristers and attorneys to make their first appearance.

In the later Middle Ages the Inns of Court and of Chancery formed a "university" where students, for the most part of noble birth, learned not only English law but history, Scripture, music, dancing and other noblemen's pastimes. In Fortescue's day each of the four Inns of Court contained about two hundred students, while in each of the Inns of Chancery there were at least one hundred; so that at this time the university contained not fewer than eighteen hundred students. While other subjects were taught in them, the Inns of Court were primarily schools of English law; they were similar to the law schools of the great mediaeval universities. In each of the Inns of Court was a body, co-opted by themselves from among the members of the society, known as the benchers; and to the benchers was entrusted full administrative and educational control. The origin of the absolute and exclusive right of the Inns of Court to call to the bar is of much interest. The call

to the English bar was and still is a call to the bar of the Inn; and those thus called were and still are tacitly permitted by the judges to practise in the courts. It has been suggested by Holdsworth that the origins of this privileged position of the Inns of Court are to be found in the history of the Inns of Chancery. He thinks it "not unlikely that the serjeants and the judges, who desire to regulate and organize the legal profession, assisted the older apprentices, who governed these smaller Inns, to maintain order and to educate their juniors, by allowing those alone whom they called to the bar of the Inn to practise in the courts."

The mode of education in the Inns of Court was not unlike the analytical and dialectical methods of instruction followed at the universities of Oxford and Cambridge: it consisted in lectures and arguments. The solemn reading, with its accompanying disputation, in which members of the Inn took part, was followed on the same day after dinner and after supper by arguments and a moot. The benchers acted as judges, while two inner-barristers and two utter-barristers were counsel. The education thus given in the Inns was primarily of a practical kind, but theory was not entirely neglected; it was an education which trained students for their work at the bar and on the bench. The discipline and life of the Inns no less than their system of education were essentially collegiate.

In the fourteenth and fifteenth centuries attorneys, whose modern successors are solicitors, were rapidly becoming a distinct professional class; the old distinction between the attorney and the pleader was preserved. Attorneys became officers of the court, and as such they fell under the regulation and control of the court. They were nevertheless allowed to become members of the Inns and to plead their clients' cases in court. As in the time of Edward I attorneys and junior apprentices were classed together, and indeed junior apprentices acted at times as attorneys. Thus although the old legal distinction between the office of attorney and that of pleader was preserved it tended to grow fainter as professional attorneys rose to a more important position. As the duties and functions of an attorney and those of a pleader were more sharply differentiated, the two branches of the profession came more and more to stand in different relations to the judges. The distinction of status between the two was therefore strengthened. The Inns of Court and the judges not only discouraged the call of attorneys to the bar of the Inns but excluded them altogether from it. As a result attorneys could not plead in court, for only call to the bar of an Inn of Court gave this privilege. Only the four Inns of Court had the right to call to the bar; and after the exclusion of attorneys from call they ceased to be members of the Inns of Court, being confined to the Inns of Chancery, which were in the nature of preparatory schools. Falling into the hands of the attorneys, who were known later as solicitors, the Inns of Chancery ultimately became mere social clubs of this branch of the profession.

It is obvious that some phases of the mediaeval legal professions of both France and England may be traced back to common origins in Roman and Germanic institutions. Each of the professions also bears the stamp of its mediaeval environment, especially with reference to guild organization, although the Order of Advocates in France was also largely indebted to Roman ideas, while the Order of the Coif and the Inns of Court in England possessed characteristics that were mainly Germanic in origin. Apart from these common features the legal professions of the two countries were marked by striking contrasts, due mainly in addition to the different cultural and psychological factors to the varying proportion of their individual indebtedness to Roman and canon law on the one hand and to Germanic and other native sources on the other. In most European countries the Romano-canonical factor in legal development was far more pronounced than in England; and hence enacted law, based to a considerable extent on the Roman codifications and the legislation of the popes and councils of the Roman Catholic church, became of far greater importance in continental countries than in England, where legal growth, founded primarily on Germanic and other native sources, was predominantly judicial in character and resulted in a system of case law.

The inchoate state of the early common law in continental countries meant that legal studies were limited to the mature systems of Roman and canon law; thus the university law schools, where alone these laws were taught, obtained a monopoly of legal education and the control of the legal profession. Trained in the Roman and canon law, the profession was influential in the reception of these cosmopolitan bodies of legal doctrine; and this reception added to other historical factors gradually produced new and vigorous systems of enacted law in all the continental countries. In England, on the other hand,

where the Roman and canon elements were less significant, legal education became a monopoly of the professional class, imbued in its practise with the common law; and lawyers were trained by the older members of the profession in the professional schools of the Inns of Court and of Chancery and not at the universities of Oxford and Cambridge, where only Roman and canon law were taught.

England because of the strength of the Norman and the Angevin monarchy had acquired centralized institutions and a systematic common law earlier than other kingdoms. The early common law was developed by royal judges who drew largely from native sources without any extensive influence of Roman and canon law, and the legal profession originated as an integral part of this historical process. Under these conditions the English bench and bar developed a professional organization consisting of two parts: the Inns of Court and of Chancery on the one hand and the Order of the Coif, restricted to the serjeants and the judges, on the other. On the continent the professional system developed in general on different lines: it gradually became the rule that practise did not, as in England, lead to the bench. Not only were the careers of the practitioner and of the judge separate and distinct, but lawyers of both classes were trained at the university law schools. The English universities also taught Roman and canon law, but under the common law system they offered little to a prospective practitioner in the courts.

Everywhere in Europe the rise of a secular and learned profession of law was one of the outstanding facts in the history of the later Middle Ages. Gaining its independence from church administrators of canon law, the legal profession not only exercised a vast influence in the molding of the law in all countries but it also did much to further the growth of the rising monarchies of the west. In this matter, however, as in so many others the English profession holds a place in history which marks it off from the profession in some of the continental countries; for although in the thirteenth, fourteenth and fifteenth centuries the English common lawyers were a force making for the growth of monarchical power, as time progressed the tendency toward absolutism, which was contrary to the spirit of the English common law, was chiefly fostered and supported by the civilians and canonists.

H. D. HAZELTINE

MODERN LEGAL EDUCATION. The end of the Middle Ages in England, France, Germany, Italy and Spain found an elaborately trained group of lawyers in complete control of a lucrative profession. In most countries these lawyers were organized locally into corporations or quasi-corporations and almost everywhere they were highly privileged. If they ranked merely as upper grade ministerial officials in most parts of Germany, they formed a sort of subnobility in England and northern France, while in Spain, in parts of southern France and in some Italian communities they were classed with the hereditary aristocracy. More than any other profession the law was the avenue to preferment and promotion in state and church.

It must be remembered, however, that this is true of only one branch of the profession. Throughout Europe the distinction was maintained between the *advocatus* and the *procurator*, the legal patron and adviser and the legal agent. The *procurator* was also often a member of a guild, but it was the *advocatus* who claimed and received the right to be the legal expert proper and the privileges associated with it. Access to such privileges was inevitably restricted, and the restriction was made by means of educational tests. Almost everywhere in Europe the general test was the possession of a university training. Even in England, where university training was not obligatory, it was in fact possessed by almost all lawyers—at any rate by almost all barristers, the English equivalent of the European advocates. Elsewhere for the *advocatus—Anwalt, avocat, avvocato, abogado*—a university education and its symbol, the university degree, were prerequisite. This university training was usually supplemented by a more or less organized apprenticeship, in which the recently graduated lawyer learned the rudiments of his craft. Often the apprenticeship was no more than a close association with older adepts or the frequent observation of the conduct of legal business. But the association and observation were as often as not compulsory in fact, and in Paris they were combined with actual lectures held in the guildhall or what corresponded to it.

Evidently this training tended to make a full mind. The law was apparently contained in books, and devices to facilitate the use of books were poor and inadequate. The result was that those who had subjected their memories to the severe tax necessary to acquire the law were prone enough to add the arrogance of learning to the arrogance of lucrative privilege. Lawyers

were frequently scholastic pedants, a condition aggravated by the fact that their authoritative texts were in a learned language and that even in the vernacular their technical terminology was incomprehensible to the layman. On the other hand, the constant assignment of these scholastically trained lawyers to the task of active administration emphasized vigorously the practical goal of all legal training. Further there were specialists whose interest in branches of the law was nicely graduated. Besides the decretists, legists, feudists, *coutumistes*, there were men who were better at presentation than at research, at exposition than at argumentation. For all these men—administrators, teachers, specialists—the training, except for variations in the apprenticeship, was practically the same and no appreciable change was made in this unity of training until well on into the period after the French Revolution.

The Enlightenment and the beginnings of scientific criticism in the seventeenth and eighteenth centuries profoundly affected the character of legal teaching. The basis of law was no longer the semi-inspired utterance of a book but a hypostatized reason or natural law, of which the Roman law as enunciated in the *Corpus juris* was but a historical approximation, although concededly the closest approximation the human intellect had so far achieved. The beginnings of historical jurisprudence, which run from Baudouin and G. B. Vico to Hugo and Savigny, far from breaking the hold of the Roman law on continental legal teaching served only to strengthen it. It was the historian Savigny who successfully resisted the attempt of the pandectist Thibaut to establish a new code on scientific and modern principles.

The breach in the intrenched position of what might be called scholastic law was made by the French Revolution and was prepared by the intellectual movements that are symbolized by the names of Rousseau and Montesquieu. To the revolutionary leaders the legal system was an integral part of the feudal structure—a privileged corporation administering a mystery in the interests of king, church and nobles. The corporation was abolished root and branch by the Legislative Assembly, and the study of law as a special discipline was discontinued. Both were reestablished by Napoleon and both were confronted with the wholly new task of examining and administering the new *Code civil*, one of the finest and most lasting fruits of a revolution which thought it had permanently and immutably established the freedom of the citizen and the rights of property. The code became the essential of legal teaching, and the study of Roman law was made an auxiliary branch of instruction, emphasized and obligatory but ranking merely first in a group of subjects which included legal history, criminal law, commercial law, political economy and later several aspects of the new sciences of public, administrative and international law. It became clear that the entire curriculum could no longer be mastered by every student. The need for making a selection involved a specialization of professional interests in the preparatory work.

The other continental countries followed very slowly in the wake of France. In Spain, Switzerland and the Scandinavian countries Roman law, however completely recognized as underlying the legal structure, had none the less never formed the major element in legal teaching. That place had been occupied by national codes or custumals, none of which pretended to the completeness or scientific value of the French code. Within the nineteenth century the French code, the French judicial system and substantially the French organization of legal teaching were adopted in Spain, Italy, Belgium, Holland and Rumania, suffering minor changes in these various communities, especially in Spain.

In Germany, the *usus modernus Pandectarum*, humanized by Vangerow, Savigny and Jhering but none the less characterized by subjection to Roman law, seemed in the first half of the nineteenth century to be in permanent control of legal instruction. But the Germanist movement, driven by both patriotic and historical impulses and able to match the names of the great Romanists with names like Grimm, Heusler, Schröder, Brunner and Sohm, had inspired a large number of young jurists with a lively interest in German law, which had previously been a slighted auxiliary discipline. The unification of Germany in 1870 made the ultimate codification of the private law a certainty, and the active preparation of a code could not fail to push Roman law out of its privileged position. While the dominance of Windscheid in Germany and of Unger in Austria gave an enormous importance to the Roman elements in the new code—an importance which the final revision did not completely eradicate—it was inevitable that the code of 1900 should revolutionize legal education in Germany. A system of instruction by which the Pandects were taught to practically every student for ten hours every week for at

least a year was forced to yield to one in which Roman law proper was relegated to the place of an interesting but unessential illustrative subject. Radicals joined conservative Germanists in inveighing against the incubus of the *Corpus juris*, and the reduction of Romanistic studies proceeded far more rapidly than had been the case in France. The movement to make them entirely optional acquired appreciable force before the World War.

But long before the code the weakness of the scholastic type of legal training had been noted. Nor was the training any less scholastic when an annotated code took the place of an authoritative textbook on the Pandects. Jhering and after him Zitelmann attempted to provide for practical instruction on a systematic scale within the ordinary scheme of legal training. Their success was slight and the study of law remained in Germany and in all continental countries—as it still is in large measure—one in which an enormous mass of doctrine must be learned by heart and retained in memory. Lectures are often dictated, circulated in mimeographed form or printed, and the correct reproduction of statements to be found in these lectures is the standard of success in legal education.

It is almost a truism that there is only a moderate correlation between success or utility in professional practise and the mere amassing of information. To train the faculties which make for the effective use of legal knowledge some sort of apprenticeship has always been necessary. The problem has been to determine whether the three most readily distinguishable applications of professional skill, those of the judge, the advocate and the law teacher, should early be segregated in such apprenticeship. This segregation has been most completely effected in Germany and least in England and the United States.

The German system is typical of the separation of the judge and the advocate. As *Referendar* the young advocate gets his practical connection with official procedure and under supervision makes his first contacts with clients. After two or three years as *Referendar* he is confronted with the choice of joining the ranks of the practising lawyer or entering the judicial career as assessor. While the examination he takes is the same in either case—the fitness to be a judge is the test of admission to all the ranks of the legal profession—the paths which diverge at the beginning of professional life rarely reunite. There is little opportunity to pass from one career to the other, and even more rarely is there a passage from either branch of the purely professional careers to the doctrinal, except in specialties which do not occupy the full academic time of a professor of law. The reverse, however, is far commoner, particularly in France and Italy, where eminent professors of law are freely utilized on public and private occasions—a practise which has been gaining ground in post-war Germany.

Legal education in England concerns itself principally with that of barristers. Attorneys or solicitors—the mediaeval procurators—were formerly trained almost exclusively by a direct system of apprenticeship. The amount of general education of these attorney's clerks varied enormously, but only in the upper reaches of this group were there any considerable number of men trained in public schools or in the universities. The Incorporated Law Society, first founded in 1825, gave its first examination for prospective solicitors in 1836 but did not receive official recognition and authority until the passage of the Solicitors' Act of 1877.

The control of the education of the barrister (*advocatus*) by the Inns of Court had been part of the guild organization of mediaeval English society, except that the members of the Inns were recruited in the main from classes distinctly higher than those which entered other guilds. But the Inns decayed rapidly in the seventeenth century, and such legal education as English barristers received in this century and the eighteenth was casual and almost optional. Manuals like those of Fulbeck, William Phillips, Roger North—all in the seventeenth century—were addressed to people who might avail themselves of the proffered advice or reject it as they chose. Lectures in the Inns had lapsed; examinations were unknown. Reading for the law under the guidance of an established barrister was common, but this relationship was sharply severed from the indentured apprenticeship of the attorney's clerk. It was not until the establishment in 1852 of the Council of Legal Education, composed of twenty judges and barristers, that examinations became obligatory, a system which was further regulated in 1871. The English barrister must now pass satisfactory tests in Roman law, constitutional law and legal history, evidence and civil procedure, criminal law, property law, contracts and torts, equity and, finally, the common law. These examinations have increased in rigor and guarantee a moderate amount of sifted information on the topics

covered. In addition the council has established a system of law lectures, but attendance is not a prerequisite for taking the bar examinations. The practical apprenticeship is left to individual choice. There is nothing to prevent the duly admitted barrister from beginning practise promptly. The only vestige of the guild control is now found in the requirement for university trained lawyers to "keep" four terms in one of the Inns for three years.

University lectures in English law began at Oxford in 1753 with Blackstone, although lectures in Roman and civil law had long been given to aspirants for Doctors' Commons and the Court of the Admiral. The Downing professorship at Cambridge was established in 1800. Enormously influential as were Blackstone's commentaries in their published form (1765), especially in America, the number of English lawyers who came directly under the influence of university training in law was small. This situation, however, has changed rapidly; the law courses at Oxford and Cambridge are now well attended. London University has an active school of law and other universities, like Manchester and Birmingham, are equally well provided. The foundation in 1908 of the Society of Public Teachers of Law gave public expression to the new character of English law teaching, and there seems little doubt that in a very short time all English barristers will have received a university training in their special field. With the university training there is involved the preliminary general education which is the requirement for matriculation at any English college or university. In this preliminary education classical studies are rapidly receding, although they still figure prominently. In this training the important fact, however, is that there is no attempt to reach into the pre-university schools to segregate future lawyers by any system of prelegal studies. It is recognized that the best preparation for the study of law is the possession of the culture common to the general group of educated men.

The study of law in America followed a course quite its own. The colonists of New England carried with them the bitter Puritan hostility to the common law and to lawyers in general. A special training for law was obviously unnecessary when the only proper source of law was "Moses His Judicials," available to every reader of the Bible. In the other colonies a special need for trained lawyers did not seem apparent when the very application to the colonies of the common law was in great doubt. During the eighteenth century the common law was discovered to be the source of English liberties and there set in and advanced rapidly the process of what was in effect a "reception." Lawyers admitted to the Inns—despite the relative insignificance of the Inns in England during the eighteenth century—were in increasing demand. Between 1760 and the end of the revolution some one hundred and fifteen Americans are said to have been so admitted, mostly from the southern colonies. At any rate there was an appreciable number of trained lawyers in the colonies in whose offices local aspirants could obtain the needed apprenticeship. Books like Coke's *Institutes* and Finch's *Law* were available as well as a number of English law reports, but the immediate success of Blackstone's *Commentaries* in the decades directly preceding the revolution made it possible for any industrious person to get what seemed to be a complete knowledge of the whole legal system, which required only supplementing by actual practise. Men like Story and Kent were so trained even after the revolution.

Private and undirected study and practical experience gained by voluntary and casual clerkship have constituted until very nearly the present time the prevailing method of legal study in the United States. It is only recently that bar examinations have been established and still more recently that any requirements of general education have been imposed. The American Bar Association almost since its inception has labored vigorously for the improvement of legal education and has gained general acceptance in theory for a program of preparatory studies which covers not merely the American high school but the first two years of collegiate instruction. These requirements, however, are far from being completely realized either in practise or in legislative enactment. The premise of equality of opportunity contained in the democratic theory, especially in the western states, and the laissez faire attitude prevalent throughout the United States have been powerful influences working against specialized training for law. The traditional hostility of laymen to an organized profession of experts is still the source of strong opposition to a thoroughgoing reform of the system of legal education. One state, Indiana, maintains in its constitution the right of any citizen to practise law. But the facts of the situation are forcing a gradual acceptance of proposals to increase the number and quality of the

preparatory requirements for the study of law, if only in view of the economic pressure created by a vastly overcrowded profession.

It must be noted that the distinction between barrister and attorney, the *advocatus* and *procurator* of Europe, has never prevailed in the United States. The absorption of the duly trained lawyer in the routine and ministerial duties of the solicitor has exaggerated the practical and business aspects of the law and placed obstacles in the way of setting university requirements for legal training. The study of law in the United States has, however, been a feature of university curricula for a long period. Apparently the first lectures were delivered by Chancellor Wythe in William and Mary's College in 1779. The Litchfield Law School, from which the Yale Law School claims descent, was established in 1782 or 1784. In 1815 Judge Isaac Parker was appointed the first Royall professor of law at Harvard. In 1829 Joseph Story was made first Dane professor of law at Harvard with a commission to teach law of nature, law of nations, maritime law, equity and constitutional law. Francis Lieber at Columbia in 1857 gave a reputation to a school which under Timothy Dwight reached a high degree of efficiency.

But university law training long remained the optional and almost ornamental accomplishment of a small number of lawyers. This number, however, soon increased as the intellectual frontiers receded. The apocryphal story of Lincoln's first contact with college trained lawyers is a symbol of the change in point of view. In 1833, when Litchfield closed, there were about 150 law school students in the United States. In 1915 there were over 20,000 in about 140 schools; the number at present is a multiple of this figure. But it is only within the last half generation that a majority of the members even of the Supreme Court of the United States have been men trained in law schools. The need at present is the discrimination of law schools which give a real instruction in law from those which are mere "cram" schools for the bar examination. The Association of American Law Schools is based on the attempt to make such a discrimination and has proved an effective stimulus.

Doubtless the most important contribution of the United States to legal teaching is the "case method." This was first established at Harvard in 1870 by C. C. Langdell and developed by a group of brilliant teachers, among them Ames and Gray. Keener, a pupil of Langdell, established the case method in Columbia, and practically all important law schools in the country have since adopted it. The case method is based on the study of selected cases in one or another of the recognized topics of law, such as contracts, torts or property. These cases are derived from various common law jurisdictions and are arranged systematically and historically. The method was based by Langdell himself on the two principles that all the law was in books and that it could be studied inductively. Both statements are inaccurate. No true induction can be carried on by means of a selection made for the students by the author of a textbook. The real value of the case method lies in the very opposite direction. Its proper application necessitates a high development of a dialectic technique, which the Dwight method despite the fact that it was called Socratic only partially called into operation. Further it produced in the students an ardor for argumentation and an aptitude for fine distinctions which have always been taken to be characteristic legal virtues.

The weakness of the case method may be said to lie in the fundamental fallacy that the law is exclusively to be found in books. This defect was aggravated by the limitation to which the Langdell school was prone—that the books used were always collections of reports. In this way the common lawyer's prejudice against statutes and his contempt for social custom which had not reached the prescriptive stage was prejudicially fostered. And the prejudice was the greater in the face of almost revolutionary economic changes and the piecemeal codifications which in America attempted to compensate for the rejection of more ambitious efforts at establishing a code. Moreover the selection of cases was inevitably subjective. The Langdell-Ames casebooks unduly emphasized England and Massachusetts. Under any circumstances the selected cases could at best be a fragmentary and miscellaneous assortment of legal propositions. Only a vigorous and keen dialectic could turn them into a means of presenting any subject completely. The supplementing of selected cases by brief doctrinal discussions in the casebook itself was not a particularly successful makeshift. A new departure has recently been advocated by those who would add other illustrative materials to the teaching instrumentality—documents, commercial records, economic and social statistics and the like. On the other hand, since the case method evidently does not depend upon existing categories of legal classification, it is likely that in the hands

of competent men it will still prove the most fruitful and stimulating method in legal training. It has made very little headway in English law schools, where the scholastic method of doctrinal lectures tested by examination is still in vogue. An interesting attempt to apply it in the civil law on a small scale resulted in the *Espèces choisies*, edited by Henri Capitant and Édouard Lambert (2nd ed. Paris 1927). But although it has been greeted with interest the method itself has not been allowed a real entrance into actual teaching on the continent.

Legal education in the Latin American countries has tended to model itself on France rather than on Spain. Even more than in France, however, the study of law in the universities has been not so much a preparation for the practise of a specialized profession as a general avenue to all branches of public life. The great interest of South American countries in international law has given that subject so large a place in the curriculum that it often happens that there are as many as five chairs of international law in the larger universities.

Before the Bolshevik revolution Russia's system of legal education was also modeled on that of France; Russian lawyers were frequently trained in Paris. One of the first acts of the Soviets was an attempt to abolish completely the entire profession of law. As far as formal teaching of law is concerned the prohibition is still in force, but in view of the constantly mounting accumulation of new legal material in the form of codes, commentaries and reported cases the gradual rise of self-trained specialists in these matters is almost inevitable. A recognizable group of such specialists is in fact already to be found in the Soviet Union.

In the Far East the fundamental difference between western and eastern methods is at once apparent. In Japan and many parts of India the western organization of judicial administration was taken over almost in its entirety. Japanese lawyers are at present trained in law schools closely resembling the law faculties of German universities. Indian lawyers attend lectures like those now given in the law schools of Oxford or Cambridge and a great many of them are admitted at the Inns of Court in England. But in China and those other parts of the Orient in which native conditions persist a profession of law is impossible, since law itself is not dissociated from the general communal customs, which are at the same time religious, moral and legal. Courts in a real sense do not exist. The authority of elders and headmen is that of arbitrators, although a powerful public opinion gives their arbitraments a sanction at least as strong as that of a western judgment. It is evidently impossible to prepare for functions which are so undifferentiated as those of elder or headman, particularly when these are not offices to be gained by personal effort. None the less it is clear that among responsible Chinese officials there have been individuals particularly interested in the legal as distinct from other traditions and particularly adept at determining controversies. While such men are called lawyers, it is not likely that without the impulse from the West they would ever have developed into a separate profession.

The quality of law existing in any country depends exclusively on the quality of those who administer the law, including administrators proper as well as judges, although the functions of these two groups are never completely differentiated. To the extent, however, that they are differentiated the development of a group of legal experts who plead before the courts and advise litigants is almost inevitable, and it is almost equally inevitable that the courts will be in great measure manned by former pleaders.

Under these circumstances the education of lawyers is the education of judges and determines the quality of that part of the law which judges administer—a part which in English speaking countries is much larger than that of any other agency. If lawyers form a guildlike corporation, a craft or a mystery—and the very limitation of their members and the restrictive requirements of their selection makes this hard to avoid—it is obvious that there is a constant risk of dissociation of the law from the rest of the intellectual, social and economic life of the community. The mere addition of new disciplines to the legal curriculum cannot lessen this danger. Since all social relations are potentially legal, a complete legal curriculum would in theory contain almost every branch of human thought or activity. The continental practise of including economics and politics in the legal curriculum has had an appreciable effect, but it has not solved the problem, since thorough command of these subjects divorces men from legal practise and turns them into other activities.

It may be questioned whether a sociological approach to legal studies is very much more promising. A trained profession demands a technique, a technical vocabulary and a common

fund of technical information, the acquisition of which must always remain the chief purpose of a legal training. The sociological approach ordinarily means little more than a radical revision of the categories into which the legal material has traditionally been cast. Such a revision has the salutary effect of stirring new enthusiasms and discarding obsolete survivals. But unless it is sufficiently thoroughgoing to change the quality of the thinking done by judges and lawyers it cannot crucially affect the character of the law—at any rate in England or the United States. The movements already under way—those which look to the lengthening and broadening of the preliminary education of lawyers and those which attempt to utilize other than book materials as the instrumentalities of legal teaching—give some promise of success. But there is still the possibility that this trend may result in a renewal of the guild type of profession, privileged and aloof, which the community will undoubtedly view with suspicion and dislike. Perhaps methods can be devised to increase the sense of responsibility of the organized bar and judiciary to the community. But it is doubtful whether such a result can be obtained by any device of formal education.

MAX RADIN

MODERN LEGAL PROFESSION. A survey of the legal profession of modern times shows the need in every country of a group equipped to deal with the complex problems of law and administration under the wide variety of institutional set ups. But this group is rarely popular. In Russia a body of theorists, practitioners and administrators of the old regime were swept away by the Soviet state on the theory that they could be dispensed with in a non-exploitative society; yet the multiplication of administrative machinery and the need for interpreting rules and applying some process of justice called back into existence in fact, if not formally, a profession skilled in interpreting the regulation of a communist system. There have been other cases in continental Europe of similar hostility to the legal profession—notably in France during the revolution. In that case too the lawyers were identified in the minds of the revolutionists with the entire system of oppression and privilege of the *ancien régime*. But the profession has invariably reemerged.

In civilizations like the west European, dominated by economic and psychological individualism, the advocate is the fine flower of the bar; leaders of the profession are engaged rather in arguing the rights of the individual before criminal courts than in handling the rights of individuals in civil suits. The continuity of the historic drive from the code of Justinian through the *Code Napoléon* and into the modern French, German and Italian codes has maintained a uniformity of position as between the barrister in Europe and the Byzantine logothete of the later, particularly the Eastern Roman Empire. The need for reconciling the importance of the individual with the demands of a crowded, close knit society has also thrust the legal philosopher into prominence. Continental Europe unlike eastern Europe or the common law countries has also a separate category for lawyers who are to be judges. In the common law system the judges are recruited from the legal profession, without, however, any special training for the function; in continental systems one line of legal training leads to the judicial posts exactly as another line leads from apprenticeship through the grades of attorney and counselor to the dignity of the barrister.

In both England and the United States the dominance of the commercial and industrial structures, the complexity of business organization and the position of world economic leadership steadily thrust upon the legal profession problem after problem which was not originally intended to form a part of legal practise. In both countries the legal profession in addition to exercising its historic monopoly over control of the machinery of the courts and over the giving of private counsel to parties with respect to their legal rights became virtually an intellectual jobber and contractor in business matters. The British system, seeking to preserve the ancient supremacy of the barrister, kept the two functions separate within the profession (and incidentally separated the bar even from its clients) by assigning the legal burden of the new economic system to solicitors—men trained differently from the barristers and not privileged to practise before courts but skilled in interpreting law, drafting documents, handling the many problems of conveyancing a property, organizing business enterprises, securing the orderly course of credits and managing the entire paper work of commerce. In the United States no such distinction was formally made. In theory all lawyers were alike; all had the same rights and were supposed to be able to perform the same duties. In fact, however, the functions diverge as they do in England, so that one branch of the Ameri-

can profession, rarely appearing in the courts, devotes itself to handling business matters, giving business counsel, drafting documents and the like; another branch to handling litigious matters, trying cases in the courts and working the judicial machinery. Still others develop specialties—patent law, admiralty law, customs and tariff matters—and practise before various administrative tribunals. The division is informal and one of choice but none the less real.

The position of the legal profession in American life illustrates in clearest relief the consequences for the profession of the rapid industrial and financial growth of the community. One of the results of capitalistic organization in the United States lay in the transfer some time toward the end of the nineteenth century of the responsible leadership in social development from the lawyer to the business man; at the same time the position of the lawyer had an even greater appeal than before. It remained one of the careers through which a man could attain influence and wealth even without having capital at the start; and the fortunes accumulated by a few men at the bar were taken as an index of its normal possibilities. Since the prevalent democratic philosophy made entrance to a profession not the privilege of a small group but the right of any individual, subject only to minimum standards of education and training, the number of those who entered upon the study of law increased enormously.

This coincided with the period of great industrial development and rapid exploitation of resources. The manipulations of the railroad builders, the oil pioneers, the utilities and traction magnates, and the accompanying political corruption were tolerated by the community because they seemed to be connected with an unparalleled rise of the mechanisms of industry, transportation and urban life. In defending, legalizing and maintaining this exploitative development the legal profession found its principal function. Many of the great American law firms of today, recognized as the leaders of the bar, owe their origin to the safe navigation of clients through some scandal of the latter part of the nineteenth century: the defense of the Tweed ring, the safeguarding of the interests of Jay Gould in Erie, the wreck of the Pere Marquette railroad and the violences of the Harriman administration, the wreck of the Rock Island railroad. The impression grew that the lawyer existed to serve and not to counsel his clients.

The law firm became virtually an annex to some group of financial promoters, manipulators or industrialists; and such firms have dominated the organized profession, although they have contributed little of thought, less of philosophy and nothing at all of responsibility or idealism. What they have contributed, however, is the creation of a legal framework for the new economic system, built largely around the modern corporation, the division of ownership of industrial property from control and the increasing concentration of economic power in the industrial east in the hands of a few individuals. In the western part of the United States this movement has been less thoroughgoing, probably because the nuclei of the new national organization lay primarily in the east, save for a few centers in the middle west and on the Pacific coast.

The rise of the business, or corporation, lawyer in the United States as the fine flower of the profession almost of necessity produced its reaction. Some men, like Justice Brandeis, after attaining primacy in that branch of the profession revolted from the cynicism of its views, developed a philosophy of the protection of individual rights and made their national reputations in pleading, often without pay, causes which turned on the protection of the public against exploitation by private groups. This revolt indicated that the problem was as much economic and philosophical as legal: the law can do little more than reflect and bring into order the current mores and aggregated desires of individuals. To make action effective the lawyer who had public interests was forced either to turn to his books and become a scholar or to turn to public life and go on the bench or into political office. But political participation was a two-edged instrument. The forces of financial concentration needed political influence quite as much as they did legal ability; and the lawyer who was successful in public life was all the more valuable to them. The common result was that after a relatively brief period of public office the lawyer returned to his profession with enhanced reputation and became a more effective servant of the evolving industrial scheme. The lawyer as statesman or public officer too readily yielded to the temptations of the lawyer as practitioner and interpreted or served the business groups instead of furnishing a statesmanlike leadership. He conceived of himself as a technician rather than an originator of policy.

A third and more recent tendency is illustrated by those lawyers who seek rather to be

scholars at the bar than great commercialists and who aim to mold legal doctrines through study, research, writing and teaching, translating them into legal reality through practise either private or for various public bodies. The mere technicians leave little trace behind; but the lawyer-scholars may exercise a real influence on the legal profession. The literature of the law falls very largely to them and to teachers and judges.

A cross section of the legal profession of today would show a hierarchy of activities. At the top is the "legal factory"—the great corporation offices of New York and Chicago, having thirty or forty partners and perhaps two hundred or more associated attorneys, and doing a volume of business of several millions a year. The tremendous overhead requires the assurance of a steady flow of a large volume of business; these institutions are therefore largely adjuncts to the great commercial and investment banks; and they use that connection to divert to themselves a portion of the funds flowing through the banking system. To some extent also their profits are due to the use of cheap labor in the form of young lawyers recently graduated, of whom a new crop is available every year. Such offices are not distinguished in the courts; they act chiefly as financial experts and draftsmen of financial papers. They have contributed little to legal literature, social responsibility or public leadership; but they have been highly profitable and have safeguarded the position of the new business organizations. Not infrequently they have used political connections to procure or defeat legislation—flagrantly in the case of the Delaware Corporation Act of 1929—and in large measure they dominate the bar associations and professional organizations. Below them are the smaller offices, also in the cities, composed of from three to fifteen or twenty lawyers. These men are more often found in the courts; they are lawyers rather than solicitors and have contributed considerably more than have the "law factories" to business life and to community development. Particularly in the smaller cities and towns they divide their activities between the practise of law and participation in politics. It is from this group that the scholars at the bar are largely recruited. Below this group are the vast majority of lawyers, practising alone or in partnership with another, primarily handling the affairs of individuals and small businesses. They run the entire gamut from the lawyer who seeks chiefly to be a human being to the marching lawyer, who finds it necessary to make his living by dubious means, chasing ambulances or carrying on doubtful litigation for revenue only. While the upper limits of this class frequently produce unexceptionable individuals, the lower limits in the great cities lie dangerously close to the criminal class.

There has grown up a specialized group of lawyers who devote all their time to law teaching, thus marking a change in the original theory of legal education, by which teachers were recruited from practitioners and almost always divided their time between active practise and teaching. Dean Langdell of the Harvard Law School urged training exclusively for teaching, and his pupil James Barr Ames—who studied law, was admitted to the bar, went at once into the faculty of the Harvard Law School and continued there throughout his life—inaugurated a new trend. Following him teachers have gone directly into most of the better known law schools, with little or no preliminary practise but with a technical membership in the bar. The strength of this arrangement lies in the opportunity of the teachers, untroubled by the pushing of private interests and the bias of alliances, to develop theory for its own sake; its weakness lies in the widening of the division between the theory of the law and its practical results.

There are indications that the lawyer-teacher or lawyer-scholar is tending to attain in the United States a position analogous to that of the great commentators in the civil law systems. With each of the forty-eight states rendering judgments which serve as case precedents and with the added precedents set up by the federal courts the task of creating a coherent system out of the multiplicity of legal premise and the variety of decisions becomes a huge one. The work of these men, as contained in textbooks, law review articles, research and such projects as the American Law Institute (*q.v.*), has been increasingly recognized by the courts, and the legal scholar is gradually establishing a strong position as the true maker of American law. On the European continent also the highest precedent is the commentary of the trained legal scholar; but there the decisions of the courts are only secondary, and the influence of the scholar is traditional rather than empirical. In England, where the body of case law remains small and is susceptible of being made coherent by the logical processes of courts, the function of the lawyer-scholar is still not so important as in the United States.

The differences of training under various sys-

tems have considerable influence on the character of the legal profession. In England the prospective lawyer begins with the foundation of a general classical education, continues by "reading the law" in one of the Inns, is examined as to his qualifications and is then called to the bar. But it is extremely unlikely that for many years he will make a living by his professional activity. He enters the office of a barrister and "devils" for him for a period of years, occasionally receiving an opportunity to argue a case when his senior is absent or when the point is not important. Finally he is "briefed" by a solicitor who seeks an able man without the expense of a famous lawyer, and thus after a decade of experience he really begins the practise of law. The profession is therefore small, limited to men who at the beginning at least have independent means, and it remains in the hands of a highly select group. On the continent the educational system, although widely different in detail, has much the same effect on the character of the profession. In France, for example, the recognized competitive examinations of the universities, the careful examination by the technical schools, the virtual impossibility of establishing a practise except through relationship with an already established lawyer or the purchase of his clientele, tend to limit the legal group to a hereditary or carefully selected class. In the United States, on the other hand, where the idea of equality of opportunity has called for freedom of professional choice, the raising of standards of admission to the bar has been a long, slow process opposed at every turn. The fact that a large part of American practise is made up of common sense negotiations rather than extreme technical skill has tended to favor this view. A number of states, notably New York, have raised standards by requiring a certain amount of university work and by superimposing upon the legal degree the requirement of a year's clerkship in the office of a recognized lawyer. It cannot be said as yet, however, that the gradually rising standards for admission to the bar have tended to produce a small coherent group as in England or France. Actually the confinement of the profession to men who are both able and qualified is most likely to take place through sheer economic pressure. The fact that great numbers of lawyers without considerable educational preparation find it difficult to make a living will do much to make the profession again a restricted and more or less privileged group.

The cohesion characteristic of the legal profession in England found expression also in the American profession in the earlier days, and although it has completely broken down in the larger cities it still continues in the smaller communities. Even where it has preserved its cohesion, however, the bar has changed in character; from an organization concerned primarily with maintaining the dignity and serviceableness of a profession it has become a substantial agreement among attorneys to protect each other. Where the cohesion has broken down, there is no organized opinion of the bar to exercise an effective control. The financial lawyers pursue their own system of ethics. The political lawyers commonly maintain their standing through influence with the courts or with the government; in cities like New York and Chicago courts and state and city officials maintain lists of such lawyers, whom they reward for their party services with profitable business. Criminal defense lawyers vary all the way from men who specialize in handling criminal matters with entire honor to men who deal with the underworld on a basis of familiarity almost amounting to membership. The bar through its canons of ethics and by securing the adoption of statutes specifically condemns such practises as ambulance chasing, soliciting of clients and advertising and from time to time in spasmodic activity disbars those guilty of them. But essentially the system continues without much change from year to year, since proof is difficult and the business of the bar is after all to care for its clients.

This has not always been the philosophy of the profession. The historic view was that a lawyer was an officer of the court and therefore an integral part of the scheme of justice. But the conception of the lawyer now obtaining is that he is the paid servant of his client, justified in using any technical lever that the law supplies in order to forward the latter's interest. Reliance is placed on the fact that the opposing interest may pull an opposite set of levers and that in the resulting equilibrium approximate justice will be performed. In the field of the large corporations, with their great concentration of power in the hands of a few men, this point of view has been disastrous for professional standards and public welfare. The financial interests are amply represented by legal skill, while the vast disorganized public, composed of investors, workers and consumers, is not represented at all.

The complete commercialization of the American bar has stripped it of any social functions

it might have performed for individuals without wealth. The great law office either does not care to or cannot profitably handle cases which, while of great importance to individuals, have only limited financial significance. The smaller offices and individual practitioners, especially if they are struggling for survival, will extract the maximum compensation from their clients, whether the service is worth it or not. Criminal cases are not infrequently prolonged for the sole purpose of procuring fees. One of the worst abuses has grown up in the administration of property left in trust: a lawyer who acts as attorney for the trustee or who has some other connection with the estate will often create litigation wherever possible, delaying the fulfilment of the trust and taking advantage of every technical obstacle in order to create work for himself, and ultimately dissipate the estate in fees.

Thus the importance and influence of the bar in American life have been distinctly modified by its changing standards. In the early history of the United States there was a tradition that lawyers were fit material for politics or statesmanship. They occupied a dominant ethical position analogous to that of clergymen and received a social recognition not given to the business classes. Their services in the formation of the early state are exemplified by men like Chief Justice Marshall on the bench and Daniel Webster at the bar and in politics, who could and did mold the economic and political institutions of the country. With the rise of the industrial system and the tremendous drive for economic development occasioned by the opening up of the west leadership was shifted to the captains of industry and finance; and the influential leaders of the bar became adjunct to this group rather than an independent influence. Traditions of public service, such as are found in the medical profession, insensibly disappeared; the specialized learning of the lawyer was his private stock in trade to be exploited for his private benefit. This is roughly the position of the profession today. Intellectually the profession commanded and still commands respect, but it is the respect for an intellectual jobber and contractor rather than for a moral force. The leading lawyers, especially those who are the heads of the great law factories, must be able to please or serve the large economic groups and they become therefore extremely skilled technicians. They rarely dare and usually do not wish to attempt to influence either the development of the law or the activity of their clients, except along the line which the commercial interests of their clients may dictate. In this respect the American bar suffers in comparison with either the English or the continental system. The British barrister and the French or German advocate retain their liberty of action; they are not usually under permanent retainer from a series of economic interests whose economic and commercial ideals they are almost bound to assume.

The popular attitude toward the legal profession, never particularly favorable, has recently grown even more cynical. The general futility of litigation has given rise to the view that the principal benefit derived from a lawsuit is that the controversy is ended rather than that justice is done. The declaration required of the candidate for admission to the New York State bar, "I will never . . . delay any man's cause for lucre or malice," is not seriously regarded by the public. Despite this there is a public respect for the mental versatility and ability of the bar; its genius for getting results and its peculiar facility for tackling and untangling complex situations are almost summed up in the popular assumption that a lawyer can do anything, although the process is expensive.

In commercial life in America a vivid reaction has taken place against the whole legal process. Trade associations quite usually endeavor to arrange for arbitration between their members, and boards of arbitrators frequently avoid the intervention of lawyers. In some states, especially in inferior courts, it is prescribed that certain judges shall not be legally trained. The endeavor to escape the legal tribunal through administrative boards has been constant. But in all these processes the lawyer tends to reappear, simply because the job of analyzing a difficult set of facts and of presenting it clearly and with reasonable science calls for a specialized training and for a type of mind not possessed by many business men.

Certain groups of lawyers have undertaken various activities which indicate a possible socialization of the profession, not unlike tendencies in the medical profession. The movements for legal aid (*q.v.*) are supplemented by a large amount of unpaid volunteer legal work by private members of the bar. This includes also the furnishing of defense counsel, acting without pay, to undefended individuals accused of crime; and the "public defender" movement is a step in the same direction. Although the extent of such volunteer work has never received adequate recognition, it has probably contributed

more than any other single force to the stability of the bar.

In the economic sphere, however, socialization of the legal profession is almost a contradiction in terms. If property is not socialized, it is difficult to demand that legal services for the settlement of questions concerned with property be socialized. Another area as yet untouched by socialization—and the one which probably needs it most—is the field of family relations. This forms one of the most delicate parts of the social fabric and has been deemed too controversial (divorce, for example, being disapproved by many religious sects) to permit of handling by charitable organizations. The effect has been to leave this type of practise to the least regarded group of the bar, whereas logically it belongs in the hands of the ablest, most sensitive and most responsible group.

The legal profession has been regarded as the intellectual tie between functioning economic and social institutions on the one hand and organized legal administration on the other. This relation admits of two possibilities. One is that the profession merely does what the institutional set up appears to demand. The other is that it can assist in transforming the underlying potentialities in ethical and economic attitudes into actual results in the form of social and legal organization. In the United States the profession has tended strongly to the former function; in England and on the continent, to the latter. Signs are not wanting, however, that even in the United States the direction of the new economic trends indicates the need for a stronger intellectual guidance from the legal profession.

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See: LAW; JUDICIARY; COURTS; JUSTICE, ADMINISTRATION OF; PROFESSIONS; PROFESSIONAL ETHICS; FEE SPLITTING; CONTINGENT FEE; LEGAL AID; PUBLIC DEFENDER; DOMESTIC RELATIONS COURTS; ARBITRATION, COMMERCIAL; JUDICIAL PROCESS; JURISPRUDENCE.

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LEGAL TENDER. *See* MONEY.

LEGIEN, CARL (1861–1920), German labor leader. Legien was a woodworker during his youth and at an early age became an outstanding figure in the socialist trade union movement in Hamburg, rising gradually to national prominence as an organizer and leader. After the abrogation of the antisocialist laws Legien was instrumental in the organization in 1890 of the Generalkommission der Gewerkschaften Deutschlands, which sought to unify and direct the "free" unions sympathetic to socialism; he was president of the commission and of the Allgemeiner Deutscher Gewerkschaftsbund, into which the former was transformed in 1919. An organizer of unusual ability, he contributed enormously to the growth of the trade unions and acquired increasing influence as their leader. In 1902 an international trade union conference met under Legien's guidance and prepared the ground for the organization in 1903 of an International Secretariat (since 1913 the International Federation of Trade Unions) with Legien as secretary. Legien questioned the possibility of effective trade union action on an international scale and therefore did not play a very active role as international secretary.

Legien's conception of the task of the trade unions was that they should improve as much as possible within the capitalist system the living conditions of the workers and increase the general influence of the working class by "practical" and "positive" work; he condemned revolutionary proposals as "revolutionary phrases" and opposed the general strike for political purposes. He believed in the gradual but irresistible development from the absolute to the parliamentary monarchy and then to the democratic republic; and as a parallel process he saw the absolute power of the employers supplanted by the "constitutional factory," in which workers would have "voting" rights with employers, and finally by the "socialist factory." Legien was a revisionist socialist, but his revisionism bore a strictly trade union character; it not only expressed growing opposition to revolutionary ideas but also facilitated the increasing autonomy and power of the trade unions within the Social Democratic party. With the growth of Legien's authority his influence on the party became greater, although he was not a party official.

Upon the outbreak of the World War Legien insisted that since the Socialist International had proved too weak to prevent war, the trade unions must rally to the defense of the nation and by practical work try to minimize the workers' sufferings. His efforts to maintain the International Federation of Trade Unions as a functioning organization were considered by Allied trade unionists as a move to promote Germany's cause. He opposed all revolutionary opposition and struggle and was wholly with the majority socialists in accepting the *Burgfrieden* and its implications. After the revolution in 1918 Legien opposed all efforts for a proletarian revolution and as head of the German trade unions concluded with the employers an agreement for labor-capital cooperation, in which he saw a great step toward industrial democracy. During the Kapp *Putsch* in 1920, when a group of militarists seized power in Berlin, Legien issued a call for a general strike, which virtually assured the defeat of the uprising; but his efforts to build upon this victory and establish a workers' government failed completely.

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LEGISLATION. While in all modern states legislation tends to assume similar forms and to perform similar functions, the American legal structure differs from that of continental Europe in two notable respects. In the first place, the common law, which is the heritage of most English speaking jurisdictions, is still to a great extent unwritten law, so that much of the administration of justice lacks the guidance of legislation, whereas on the continent legislation purports to cover the entire field of ordinary civil and criminal justice. In the second place, in all continental countries the executive government outside the field of justice has because of the existence or tradition of monarchical power a basis of common or unwritten law which is lacking in the American system. In this latter respect the English differs from the American and ranks with the continental system. The course of development during the nineteenth century has been to reduce this difference. In Europe the former field of inherent executive power has been steadily encroached upon by legislative regulation and delegation, leaving only small remnants of non-delegated power. And in both England and America considerable portions of the law relating to justice have been reformed or supplemented by statutes, and smaller portions have been codified. This is particularly true with regard to criminal law and prodecure while the substantive private law in most common law jurisdictions has remained predominantly unwritten.

The difference indicated has its bearing on prevailing views of law and jurisprudence. University law schools, which largely control these views, center their attention upon the needs of future practitioners, and the main preoccupation and concern of the practising lawyer is civil and criminal justice. In America the study of the law means therefore mainly, if not exclusively, the study of judicial decisions, while on the continent it means the study of codes and statutes. The statute book is apt to be relatively as unfamiliar to the American student as judicial decisions are to the student in civil law jurisdictions.

The American attitude finds some justification in the fact that if the portions that deal with civil or criminal justice are eliminated from a given statute book, much of what remains may properly be considered as not of special concern to the lawyer. So far as statutes give authority and direction for carrying on the complex business of government, they constitute law in the sense that law may be identified with the orderly adjustment of human affairs; but the foundation of experience and information underlying most statutory provisions is primarily political, social, economic, financial, technical or administrative, and not legal. The lawyer may well disclaim responsibility for or full understanding of these aspects of the statute book.

The specific legal interest of a statute, irrespective of its content, lies therefore precisely where the legal interest of a contract lies as distinguished from a set of specifications noncontractual in character and resting entirely upon managerial discretion. Error or deviation in the latter may be technically fatal but legally indifferent; error in the case of a contract may be a legal blunder and violation is a legal wrong. As a legal act a statute, like a contract, must be adjusted to possible controversy—it must avoid inconsistency and where it cannot avoid ambiguity the statute must accept it with open eyes.

Ambiguity whether avoidable or inevitable calls for interpretation; this is a lawyer's task and one upon which lawyers are apt to look as the specifically legal work in connection with legislation. There is perhaps some inclination to look upon the framing or drafting of a statute as a legal task mainly in so far as it anticipates and by anticipation solves problems of interpretation. From that point of view drafting is largely controlled by judicial decisions, but greater familiarity with drafting problems will disclose the inadequacy of mere subserviency to judicial decisions. Risks of interpretation will have to be accepted or expedients discovered which will avoid or minimize such risks; and situations will have to be foreseen and dealt with which will make or mar the success of the statute before it ever comes into court. Skilled performance of this kind is likely to be of greater importance than adequate adjustment to judicial interpretation and constitutes an essential phase of the science of legislation. If it is not fully recognized as such, while statutory interpretation is con-

ceded a place in jurisprudence, the reason lies in the fact that supposed rules and principles of interpretation are discursively discussed in thousands of cases, whereas the thought that goes into drafting ordinarily leaves no memorial other than the letter of the statute; and while this statute commonly enough becomes a precedent for other statutes, the underlying legal principle fails to receive explicit or discursive statement.

In the modern state the function of legislation is so organized that the making of a statute requires the action of politically constituted assemblies which in the final enactment of the statute appear as consenting authorities or as representatives of the sovereign people. The political character of these bodies manifests itself in a number of features: their membership rests entirely or in part upon a representative and elective basis; the position of legislator is non-professional and compatible with the carrying on of other vocations; selection is on the basis of party affiliation or allegiance; the membership is sufficiently large to produce to some extent a "crowd psychology" susceptible to appeals to sentiment instead of to reason; there is need of group organization and incidental subordination to leadership; there is professed adhesion to policies and advance pledges to the support of specific measures are legitimate; the business of legislation is dramatized by the fact that it is confined to stated sessions and that the various measures must compete with each other for enactment.

The process of legislation is likewise such as to give play to other than legalistic or rationalistic factors: the actual sponsorship as distinguished from the formal introduction of a measure may be obscure, and a definite allocation of responsibility for the details of phrasing is frequently impossible; there is no right to a hearing for adverse interests, and while in practise such facilities are freely offered they are confined to the committee stages of a bill; the open debate while the measure is considered by the body vested with final authority is dominated by the "political" atmosphere and rarely permits of adequate attention to legal merits; the final vote is rarely influenced by the debate, being commonly a matter of foregone conclusion and not infrequently a matter of bargaining; there is absolutely no legal responsibility for final action; and although the requirement of a record vote is intended to insure political responsibility, there exist parliamentary tricks for the avoidance of a record vote and many ways of preventing a measure from reaching an advanced or final stage without assuming responsibility for such frustration. It is necessary only to compare with the features thus outlined the constitution of a court and the methods of judicial procedure to realize the extent to which legislation is affected by political factors.

The political character of legislation must be constantly borne in mind in judging statute law. Thus juristic imperfections not only are explained but appear as inevitable. The choice between the second best and nothing at all is the normal situation. The phrasing of a statute has its ultimate test in administrative or judicial interpretation, the expectation of which (particularly of the latter) stamps upon it its legal character; but the draftsman must be aware that his success from the point of view of subsequent interpretation counts for nothing unless he can first win the approval of the legislature. As Sir Courtenay Ilbert has said (*Legislative Methods and Forms*, p. 230): "Compromise and cooperation are admirable things in politics, but they do not always tend to clearness or accuracy of style, logical arrangement, or consistency, in literary composition."

Legislation moreover is a political act in that it rests upon the voluntary choice of the legislature. It is true that under democratic government public opinion may tend to force consideration of certain matters by the legislature, but considerable scope is nevertheless left the legislature as to the time, extent and details of action. Judge made law, on the other hand, is the by-product of litigation, so that the tackling and settling of a legal problem become an inescapable duty. The distinction manifests itself in a difference of form. A court is compelled to render a decision supported by reason and principle, and it does this and no more. An appellate court accompanies the decision by an opinion phrased in argumentative and discursive language, but it need not formulate an explicit rule, and if occasionally and gratuitously it does so the formulation is not authoritative and may be subsequently qualified and "distinguished." The legislature, on the other hand, must articulate an authentic rule which is literally binding. If the formulation of such a rule appears to be politically inexpedient, the legislature will leave the matter alone; political expediency will also determine the scope of the measure. But to the extent that the measure is taken up and placed upon the statute book, it becomes a political

achievement or a political commitment as the case may be.

In a more subtle and intangible way, finally, the political aspect of legislation manifests itself in its moral force and operation. Established custom may in this respect be equal or superior to legislation; but judge made law seems to lack this character. The "sanctity of law" belongs to a statute by virtue of its being a statute, and a special kind of deference is accorded to it which a merely administrative act does not command. The appeal and impression made by legislation also express themselves in its stability. Statutes are frequently amended and in the process of amendment or revision an earlier act is commonly repealed; but outright repeal of statutes is relatively rare and is likely to be of political significance.

Since American doctrines of constitutional law are almost entirely based on judicial decisions, they fail to emphasize principles and relations which lie at the threshold of legislative consideration and which consequently determine the source and structure of written law without giving rise to litigation.

In probably every country local authorities are vested with delegated and subordinate powers of legislation; but in any consideration of the legal system of the country the rules emanating from these authorities play a very negligible part. In federal states, such as the United States, Germany, Canada and Australia, there is a further distribution of legislative power between the nation and the member states, which has a very much more marked effect upon the legal system. The difference, on the one hand, between state and local government and, on the other, between state and national government is due to the place assigned in the respective schemes of distribution to the power to make rules falling within the general province of justice.

It is the universal practise to withhold from the local legislative power the entire fields of private law, the law of the more serious offenses, and procedure, leaving it the two important fields of police regulation and of governmental services of various kinds (public improvements, institutions, aid and relief) with subsidiary powers of organization and raising revenue. The extent and manner of delegation in these fields vary considerably in the different countries, particularly as regards the establishment of local undertakings and services; the English and American method of enumerated powers stands in contrast to the German system of a power of disposition over communal resources coextensive with local interests. Even under a system of enumeration the police and welfare powers of cities are sufficiently broad to give them considerable scope in the establishment and development of social policies. From the legal point of view, however, it is to be noted that all legal powers must be exercised in subordination to principles of law and justice over which local governments have no control, so that the incidents of property and contract, rules of liability, principles of enforcement and the interpretation of by-laws or ordinances are matters of state and not of local law.

The distribution of legislative powers between national (federal) and member-state governments varies too much to admit of a unified statement. Under the American federal constitution the residuary legislative power belongs to the member states, while the powers of Congress are enumerated. The enumeration of federal powers does not include (as it does in Germany) the general field of civil and criminal justice and procedure, which is left to the states. The most conspicuous subject of federal regulation is interstate and foreign commerce, a field sufficiently wide to admit of the exercise of a comprehensive federal police power. Apart from this the most important power is that to collect taxes to provide for the general welfare of the United States. It was at one time believed that Congress could make the taxing power a vehicle of regulation, by making the tax burden or its remission operate by way of controlling interests not otherwise subjected to Congress, but the Supreme Court rejected or greatly narrowed that doctrine in the Child Labor Tax case [Bailey *v.* Drexel Furniture Co., 259 U. S. 20 (1922)]. There is no limit, however, to the power of Congress to collect taxes, the proceeds to be available for the promotion of the national welfare. The taxing power is as wide as the power of appropriation, and all governmental purposes that depend merely upon the use of funds are as fully attainable by Congress as by any other sovereign legislative body. Dividing all government into service and control the constitution has to be scrutinized when legislation is to operate by way of control, but it places no obstacle in the way of the creation of services.

Legislation concerns itself with the general field of justice, civil or criminal, in three ways: it secures private rights by form requirements or administrative facilities; it removes disabilities

and otherwise brings the law into accord with changed ideas of justice (law reform); or it clarifies existing law by statutory formulation (codification). The three categories are not sharply distinguished; thus incorporation and registration facilities fall under both the first and the second category; the first statute of wills (1540) was law reform, while the Statute of Frauds imposed form requirements; codification is nearly always combined with some reform. Perhaps the most notable instance of law reform in the nineteenth century was the legislation regarding the property of married women which removed the disability of coverture. Without the aid of legislation courts of equity had already given a considerable degree of protection to the property rights of married women. This branch of the law illustrates the imperfections both of judge made laws and of piecemeal legislation. The history of the Roman and English laws is characterized by the marked reluctance of the legislature to meddle with established principles of law and justice. A greater freedom in that respect was manifested in the American colonies and states. Legislative conservatism in matters of the law of persons and property is still a dominant note in both England and America; but in view of recent reforms in England in such matters as descent, illegitimacy and adoption it is difficult to base a judgment upon the earlier history of the law. In the matter of codification a difference may be observed between criminal law, procedure and private law. All American states have criminal codes; and while there is no formal criminal code in England, all the more important offenses are covered by statutes and there is no longer any disposition to rely upon the unwritten law for the punishment of crime. As regards procedure the states of the United States are divided between common law and code jurisdictions; England has no formal code of procedure. A few American states have civil codes, which were enacted in the third quarter of the nineteenth century. The movement toward general civil codification has made very little progress since that time. The great modern civil codes have all been works of law modernization (oriental countries) or of national unification (France, Germany, Switzerland), a motive which is absent in both England, where unity exists, and the United States, where there is no power to unify. Skepticism still prevails as to whether apart from these objects the gain from codification balances its difficulties and disadvantages.

The term regulative, or regulatory, legislation is commonly used to designate a distinct species of legislation. The differentiation is based upon a somewhat inarticulate recognition of the fact that regulation transcends the bounds of necessary law. The underlying thought may be expressed in this way: human relations involve the possibility of controversy concerning reciprocal rights and obligations and concerning the line between permissible conduct and punishable or remediable wrong. The peaceful settlement of these controversies calls for the impartial arbitrament of some authority, and the province of these arbitraments constitutes the province of necessary law. Rights, however, involve managing and disposing powers of varying scope, and reciprocal relations involve the possibility of contractual adjustment. From this results a province of freedom within the law. Considerations of policy may lead the state to restrict this freedom and to subject it to conventional rules. Where the state instead of dealing with private rights deals with official powers of its own creation it may recognize, in analogy to the freedom of private management and contract, the freedom of official discretion or, on the other hand, it may bind official action by conventional rules. Since these conventional rules impinge upon a possible legitimate freedom of private or of official action, they may be regarded as adventitious (not inescapable) law, and it is convenient and appropriate to speak of this type of law as regulation.

There is a constant endeavor to raise by force of law the standard of social performance above the mere avoidance of acts which are commonly stigmatized as crimes or wrongs. Perhaps the line of least resistance is to prohibit and penalize practises hitherto tolerated or practises of uncertain common law status by reference to terms that carry the association of wrong and reprobation: fraudulent, unfair, excessive, unreasonable, injurious or unlawful. The terms chosen create the impression that legitimate liberty is left untouched. Experience, however, demonstrates the difficulty of thus marking off conduct which ought to be punished from conduct which serves legitimate interests or from conduct within the limits of social tolerance or license and throws some doubt upon the wisdom of extending the criminal law in this way. The difficulty is to some extent obviated by creating administrative powers to deal with particular cases by license or order, thus converting direct prohibition into deferred and individualized regulation. Admin-

istrative discretion is relied upon to temper the hazard inherent in sweeping terms and to reconcile conflicting public and private interests. In American legislation this phase of regulation is illustrated by comparing the Sherman Anti-Trust Act with the Federal Trade Commission Act.

Leaving aside the type of legislation (represented by the antitrust laws in the United States) which attempts to control by denouncing a possibly legitimate practise as a species of wrongdoing or delinquency, regulation may proceed by prescribing either the substance or the form of conduct, the former affecting ultimate objects or processes, the latter, minor or secondary detail not supposed to involve a sacrifice of vital interests. The substance of business is controlled by rules relating to qualification, scope of permitted activities, finance, labor relations, service or product, profit or return, while formal requirements relate to publicity, organization or procedure.

The line of division is not rigid. Not only may adverse or odious publicity amount to virtual prohibition, as in the former laws requiring that oleomargarine be colored pink, but it may justly be contended that apparently formal criteria or arrangements will practically force conformity to standards or will at least determine impressions received by others and thus affect marketability and value. Compulsory methods of accountancy, classification or grading illustrate this relation.

Even where the reaction of form upon substance is not equally close there will always be the legitimate expectation of some degree of influence which may lead the legislature to be content with formal requirements. They are more easily enforced and avoid the inherent difficulty of standardizing ultimate processes, a standardization which may also appear incompatible with the fullest and freest development of the social and economic forces of the community. It is the identification of this freedom with due process which accounts for doctrines of constitutional limitation that have been developed by American courts.

If direct substantive regulation is deemed desirable and practical, its details are generally a matter of expert or technical adjustment of means to ends and not primarily of legal interest. The legislature may mark its sense of detachment by delegating this detail to bureaucratic or non-political authorities, particularly where physical safety is the object to be achieved. If the legislature keeps such details in its own hands, this is often due to the fact that controversial issues or class interests are involved (Coal Mines Hours of Labor Act of 1908; La Follette Seamen's Act of 1915).

The legitimate or practicable province of substantive regulation constitutes a fruitful but relatively unexplored field in the study of legislation. For reasons indicated this type of regulation is conspicuous in labor legislation; it also dominates American immigration legislation. It plays a minor part, however, in other important acts of Congress. The Sherman law confines itself to generic denunciation; the Federal Trade Commission law is a measure exclusively of deferred regulation; and there is in the Interstate Commerce Act a vast preponderance of delegation and formal requirement over substantive provisions, which are honeycombed with dispensing powers. It may well be that this reluctance to prescribe ultimate standards is more significant than judicial theories of constitutional power.

The philosophy of regulation of official powers assumes a distinctive aspect, if non-regulation means official discretion instead of individual liberty. The exercise of official power is regulated either in the interest of private right or in the public interest. If the former, the sanctions of observance are in a sense automatic, for if a regulation is mandatory, advantage may be taken of its neglect by treating the official act as void, and an assertive adverse interest may be expected to see to it that this result follows. Since, however, the creation of the power itself (as distinguished from its regulation) must have been intended to serve some public interest, that interest will suffer from the nullity of the act unless the loss can be made to fall on other private parties, as in the case of invalid bond issues. Non-observance cannot be effectually prevented by penalties since it is apt to be a matter not of wilful neglect but of inadvertence or ignorance. An excess of regulation may therefore sacrifice public to private interest. American legislation exhibits the anomaly of a multiplication of safeguards in the very cases in which the risk of failure from inexpertness is greatest—in the grant of powers to local self-governing authorities; and the record of judicial nullification of public acts compares unfavorably with the almost entire absence of litigation where analogous powers are directed by unregulated bureaucratic action.

If regulation is imposed in the public interest,

the check of an assertive adverse interest is absent, and non-observance will not entail invalidation of the official act unless a special machinery is created for the purpose. This is illustrated by the operation of the naturalization law before and after the organization of the Naturalization Bureau. It is possible to divide and adjust administrative functions so as to subject official action to practically effective checks operating within the organization, and considerable legislative effort is devoted to this end. Such effort is aided by habits and traditions of official regularity, by the absence of the ordinary inducements to violation which operate where the freedom of private conduct is interfered with, and by the fact that official misfeasance if it does not amount to crime can be dealt with by administrative remedies. The elaborate machinery of penal enforcement which is called for in a statute regulating private rights has therefore no place in one which deals with the regulation of official powers; on the other hand, this regulation is apt to manifest a tendency to multiply formal requirements.

If official power serves as an instrument for controlling private conduct, regulation which checks its exercise may be looked upon as a safeguard of individual liberty. Again, if official power is an instrument of governmental service and that service directly affects private property interests, specific regulation is equivalent to enforceable private right. In the carrying on of those governmental services, however, which do not involve normal private rights, an excess of regulation may have the same disadvantage as excessive regulation of private conduct—it may purchase regularity at the cost of initiative and effectiveness.

If the governmental service is one that calls for development and progress, official discretion is the equivalent of individual liberty; and it may be as legitimate to recognize it in the organization of the service for this purpose as to set up detailed regulations for functions of routine and of conservation.

The choice between discretion and regulation is a matter of policy to be determined from case to case. To the student of legislation and to the legislative draftsman the choice is of importance, inasmuch as the vesting of discretion can be accomplished by simple forms of expression. Specific regulation may involve an elaborate technique, but the technique is a matter of legislative science only in so far as the choice of terms should avoid undue rigidity and obvious difficulties of interpretation; otherwise the details of the regulation of official powers belong to administrative science.

In one respect the regulation of administrative powers presents legislatively a more favorable situation than the regulation of private rights. The subject matter of the regulation is apt to fall under a limited number of definite types. This permits comprehensive legislation to be made available after the manner of codes of procedure; the German Voluntary Jurisdiction Act and the Prussian General Administrative Act are instances in point. Or long experience in some branch of administration may produce model statutes capable of serving as precedents by analogy; such are the English and Scottish local government acts. It would be difficult to point to acts of Congress similarly available as models.

The difference between standardized and unstandardized legislation is illustrated where civil and criminal procedure are codified, while the exercise of administrative powers is prescribed by provisions scattered through a large number of statutes creating these powers. Codes standardize the law controlling patterns of adverse human relations which are in a sense universal and permanent, and juristic formulations made two thousand years ago in some respects retain their value and validity to the present day. Such degree of standardization is impossible where legal relations are strongly bound up with interests that do not represent universal human types. Hence civil codes do not render superfluous more specialized statutes dealing with social or economic needs. Distinctive provision is thus in part inevitable; for the rest, however, it is simply the result of habit or of the lack of comprehensive legislative planning. The prevailing legislative inertia in that respect can be well understood if account is taken of the technical difficulties of a change and the relatively slight inconvenience of needlessly diversified regulation. Perfectly standardized legislation is a counsel of perfection.

There is special legislation in a more restricted sense if a statute undertakes to deal with a concrete or specific situation. The criteria that mark off special from general acts are fluid. Examples of different types of special acts are: an act granting a pension to a named individual; an act granting compensation for quarantine destruction in a special district; the authorization of a public undertaking or improvement; and the grant of a charter to a city. The difference be-

tween special and general laws or between private and public laws is recognized by many legislatures in the provisions for printing and publication, but the lines are differently drawn and there are many special acts which are at the same time public.

The practise of special legislation in the restricted sense presents a problem of considerable difficulty. While individual legislators have a personal interest in its continuance by reason of the service it enables them to render to constituents, parliamentary leaders realize its disturbing effect upon the conduct of more legitimate business. In England, where to a much greater extent than in the United States the legislature has kept in its own hand the grant of public utility franchises, there has been developed under the standing orders of the two houses a highly standardized "private" bill procedure, intended to remove this legislation from political influence and to invest it with the guaranties of impartiality. Such provisions, however, raise the question of the desirability of absolute delegation of these matters to administrative disposition.

In the United States, Congress has in recent years undertaken to standardize the legislative authorization of river and harbor works and of public buildings. This legislation although special was always treated as public. The practise of private relief bills remains, and nothing like the private bill procedure of the British Parliament has been developed. In the states special legislation developed considerable abuses. In some states it assumed the function of a supreme equitable relief, where private error or the state of the law produced individual hardship. The more questionable of these forms of legislative interposition gradually disappeared, were declared unconstitutional or were forbidden by the constitutions. Most constitutions now prohibit legislative divorces, and a number prohibit special corporate charters. In some states the constitution specifies a list of subjects upon which there may not be special or local laws; the list covers most of the field in which the former practise had been found to be abusive or undesirable. The pressure for special legislation then manifested itself in circumventing devices, and, with regard to local acts in particular, courts have found it necessary or desirable to support narrow classification amounting in substance to special selection. This experience indicates that special legislation may occasionally serve legitimate purposes, and that its absolute prohibition through constitutional provision may be unwise.

Legislative procedure is determined partly by constitutional requirements and partly by rules which each house of the legislature makes for itself. The constitutional requirements are more explicit in state constitutions than in the federal constitution. Violation of these requirements invalidates the statute if it can be proved; but journal entries and certification by presiding officers may cover up non-compliance. House rules have no extraneous sanction. Parliamentary procedure constitutes an elaborate body of law over which the courts normally do not exercise any control.

The only style requirement which is quite general in the United States is that which prescribes an enacting clause. A number of state constitutions in addition have provisions concerning title of acts, form of amending acts and unity of subject matter. Since compliance or non-compliance appears upon the face of the statute it is subject to judicial control, raising technical grounds for invalidation of statutes, which make an undesirable feature of American constitutional law. The rules are well intentioned and admirable as non-mandatory principles, but they do not lend themselves well to strict legalistic application.

Otherwise legislative style is a matter of custom and tradition. In America bills are commonly prepared by members of the legislature, while in Europe they are submitted as a rule by the government and are prepared by the administrative departments; there is only a beginning of a development in that direction in America. American legislatures, however, rely increasingly upon the aid of bureaus created by them. At first designed to furnish information and therefore attached to state libraries as legislative reference bureaus, they have tended to expand into drafting services. Congress has recognized the value of such service by establishing legislative counsels for the House and for the Senate; in England the parliamentary counsel to the Treasury has performed a similar function since 1869. The placing of the preparation of bills upon a professional basis is an important step in the evolution of a scientific technique of legislation.

In France, Germany and many other states of continental Europe statutes become operative by publication in official journals or gazettes; this practise results automatically in what becomes by compilation the equivalent of a statute book.

A few American states likewise make the taking effect of a statute dependent upon its publication through some designated channel, but in most states and also in England this is not the case. Nevertheless, in England as well as in the United States statutes are regularly printed by official authority, and volumes of session laws are published annually or biennially. In England this practise is confined to public acts; in the United States it extends to all acts. Practically everywhere statutes in which the public is interested are thus made generally accessible, whereas administrative regulations and sometimes even local ordinances are obtained only with difficulty.

The statute law in force at any given date can be gathered from an examination of all the session laws thus published. This is a time consuming and difficult process, however, since the effect of later upon earlier statutes must be considered, and in course of time the accumulation of material becomes bewildering, particularly in the absence of adequate indexing. The exigencies of public administration and of legal practise demand collections or compilations of statutes for ready reference. In all European countries this need is filled by private enterprise, and if the work is reliably done (and rival collections may constitute reciprocal checks) the lack of authenticity counts for little as against general acceptance. In the United States the practise, going back to colonial times, of occasional or periodical revision by authority of the legislature is employed by both federal and state governments. The United States Revised Statutes of 1874 are a typical example of this method of revision.

A distinction should be made between enacted and merely authorized revisions. A revision may be enacted either directly, the entire body of statute law in its revised form being treated as one or more bills, and put through the regular stages (as the Revised Statutes of the United States, New York, Massachusetts, Illinois); or by "incorporation by reference," a brief statute being passed which gives statutory effect to the appropriately described and identified revision prepared by revisers acting under legislative mandate (as in Georgia in 1895, *Laws, 1895*, p. 98). A revision is merely authorized where the legislature orders the work done by designated commissioners and provides that upon prescribed examination and certification it shall be accepted by the courts as presumptively correct; if error can be shown, however, the non-revised authentic statute law prevails (as in Alabama and Kansas and in the edition of 1878 of the United States Revised Statutes). From the legislative point of view the authorized revision is less of a commitment than the enacted revision, and it is significant that Congress has so far refused to give full authenticity to the United States Code of 1926. An enacted revision must see to it that its repealing provisions are not inadvertently excessive, but probably any conceivable formula must leave something to judicial construction. In the course of time an enacted revision will be overlaid with new legislation, and until a new revision is made, private enterprise must keep the compilation up to date. Thus in Illinois the last official revision was made in 1874, and what now goes under the name of Revised Statutes is predominantly private revision. This difficulty is avoided by the Wisconsin plan of having an official reviser, who biennially fits the new enactments into the official revision.

In some states revisions are designated as codes. There is historical warrant for this in the fact that Justinian's code (as distinguished from the Digest) was a statutory revision. However, the term code is now more commonly applied to the systematic formulation of one of the recognized divisions of law through statutory enactment, and such a code or codes will then be only the smaller portion of the entire body of statute law.

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See: LEGISLATIVE ASSEMBLIES; INITIATIVE AND REFERENDUM; LAW; JUDICIAL PROCESS; JUDICIAL REVIEW; CODIFICATION; PROCEDURE, PARLIAMENTARY; COMMITTEES, LEGISLATIVE; FEDERATION; DELEGATION OF POWERS; BY-LAW.

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LEGISLATIVE ASSEMBLIES

History and Theory ..... W. J. Shepard
United States
Congress ..... Lindsay Rogers
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History and Theory. The history of social institutions discloses a gradual evolution from the undifferentiated primitive type with its wide variety of functions toward the ever increasing specialization which is characteristic of modern institutions. At first there was no distinction between the areas of government, economics and religion, and even with the appearance of definite political institutions the functions which they performed were so generalized that they cannot be described as legislative, executive or judicial.

Among all the primitive peoples of the West there seems to have been some kind of popular assembly which shared with the tribal chief or king and with a council of lesser chieftains the powers of social control. These primitive European assemblies were composed of all the freemen of the tribe or, as the tribes were integrated into larger units, of the citizenry of the nation. Measures were proposed by chiefs or nobles, perhaps after previous discussion in a council of chiefs. The assembly itself possessed no initiative. Generally discussion was limited to the chiefs or at most to the older and more important members. Decisions were reached by acclamation, the clash of weapons or some similar demonstration. The body was convoked primarily for the purpose of hearing announcements of decisions already reached by the chiefs and to secure the cooperation of the people. The assembly was in no sense the supreme legislative authority. Law was customary and supposed to be unchangeable; it was endowed with the sanctity of divine origin. The political organization of the Greek community of Homeric times was largely similar to that described. The Homeric king could disregard the expressed wishes of the assembly, particularly if he was supported by the chiefs, but this was always hazardous. The possibility of his overthrow through revolution was the one effective check on his despotic power.

As the Greek city-state developed, a more clearly defined constitutional structure emerged. Government was at times oligarchic, at times democratic. The political institutions were substantially the same in most of the democratic city-states. There was generally an assembly, called the ecclesia, in some instances composed of the privileged, or aristocratic, class; in others, as in Athens at the time of Pericles, of the entire body of citizens. It was a system of direct democracy. The Ecclesia in Athens exercised supreme authority in foreign policy, the highest judicial power, appointed and supervised the magistrates and exercised in fact the power of making laws. All proposals were prepared and submitted to the assembly by a council known as the Boule, but a member of the Ecclesia could initiate a motion to be referred to the Boule for consideration. It would seem amazing that the most delicate questions of state policy—negotiations with foreign powers, the direction of armies and fleets —should depend upon the action of an assembly estimated variously at from ten to forty thousand citizens. But this was truer in theory than in fact. Actual attendance in the Ecclesia was of course much less. And it must be remembered that the Boule along with outstanding individual leaders constituted the real controlling force. It was chosen for a term of one year and was composed of 500 members; all its deliberations were devoted to the study of public questions to be submitted to the popular assembly. It issued the decrees necessary to the ordinary and routine conduct of public business; gave specific instructions to the magistrates; supervised taxation and finance, the administration of justice and the ceremonial and religious life of the state.

Approval by the Ecclesia was required for all important questions.

In Rome the earliest form of popular assembly was probably the unorganized *Contio*, in which the people came together as individuals and which was similar in character to other primitive European public meetings. In historic times there were three forms of gathering organized on different bases: the Comitia Curiata, an aristocratic body composed of *curiae*; the Comitia Centuriata, organized on a military basis of centuries; and the Comitia Tributa, organized by tribes. These seem to have originated in the order mentioned. In all three the people of Rome were assumed to be actually convoked. There was also the Concilium Plebis, or council of the plebeians, in which only the lower class was present. The functions of these different bodies varied and changed with the passage of time. The Comitia Curiata was the assembly of the regal period, although it lingered on for several centuries thereafter. It was convoked only at the instance of the king or interrex, and its proceedings were surrounded with religious form and ceremonial. The matters coming before it were of four general kinds: it might be called upon to elect a king; criminal cases involving the question of life or death might with the king's consent be appealed to the Comitia for trial; it listened to important announcements; and it decided important questions submitted to it. Although it was not vested with actual legislative power, the king might seek its approval on major issues, particularly the question of beginning an offensive war. It was particularly concerned with questions relating to the gentile organization of the state, such as the admission of a new gens into a *curia*; the restoration of civic rights to an individual; the adoption of an individual previously the head of a family into the family of another. Decisions on important questions were reached by concurrence of a majority of *curiae*; on less important matters, by the multitude as a whole. Voting in both cases appears to have been by some informal method of acclamation. During the early republic the Comitia Centuriata succeeded to most of the important functions of the curial assembly. It acquired a general right of legislation under certain conditions, it heard cases on appeal and it elected the higher magistrates. Its organization was definitely military in character, the people being divided into classes and each class into centuries. Voting was by centuries, a majority in each century determining its vote and a majority of centuries determining the decision of the assembly. The Comitia Tributa was probably like the other popular assemblies a general meeting of the *populus romanus*, in which both patricians and plebeians participated, although some writers have identified it with the Concilium Plebis. It is impossible to distinguish its peculiar functions; like the other assemblies it seems to have had judicial, electoral and legislative powers. Its organization was based upon the tribal structure of Roman society, only landowners being enrolled in the tribes. All these assemblies were more or less checked and limited by the Senate, a body of 300 members in the earlier period and of 600 later. The senators were at first appointed by the king and later by the consuls; but there were definite rules of eligibility based on age, occupation, wealth and magisterial status. During the early republic the Senate gave preliminary consideration to proposals to be submitted to the Comitia, having in that respect much the same relation to the popular body as the Boule in Athens.

Interesting and historically important as are the political institutions of Greece and Rome, they made no significant contribution to the development of modern constitutional government. The legislative assembly of the modern state originated in the popular assemblies, the folkmoots, of the barbarian peoples who inundated Roman civilization in the third and succeeding centuries. These tribal bodies included the entire soldiery of the tribe; in effect, the nation in arms. Their actions were confined to decisions on matters of supreme importance, such as peace and war. With the integration of relatively small tribal communities into larger aggregations these assemblies disappeared or lingered on as subordinate instruments of local government, their place being taken by councils of powerful men closely associated with the king, either as his personal retainers or with the development of feudalism as subjects holding their lands directly from him. Such was the Witenagemot of the later Saxon period and the Magnum Concilium of the Norman period in England. The history of institutional development can be more clearly traced in England than upon the continent, but the course of evolution is everywhere substantially the same. It is a mistaken view that treats the history of the English Parliament as unique. With the complete feudalization of society the assembly came to reflect the stratification which this system involved. The various classes—higher nobility, lower nobility,

higher clergy, lower clergy, townsmen—found their places in a body which can best be described by the term estates general. Corporate communities such as towns and boroughs were also included. The representative principle was employed but only in relation to the class, estate or corporation; there was no conception as yet of the people or nation as a whole. The mediaeval estates general naturally divided along class or corporate lines into several separate and autonomous bodies. Generally there were three estates: nobility, clergy and townsmen; but in some instances there were four. Even within the estates there were divisions of class or status. The upper clergy were distinguished from the lower; the higher nobles from the landed gentry; or the latter, as in England, from the townsmen. That in England the landed gentry and the townsmen were united in the House of Commons—a situation out of which a bicameral system developed—was largely accidental. France preserved the three distinct estates until the revolution, and in Sweden four estates sitting separately continued until 1866. These bodies were convoked by the king primarily for the purpose of voting taxes. That "the king must live off his own" was a fundamental principle of mediaeval public law, but in emergencies, particularly in time of war, he could appeal to the estates for financial assistance. Taxation was always a voluntary "aid" or "subsidy" and was voted by the estates separately, the rates sometimes varying according to the generosity of the different bodies. The meeting of the estates was the occasion for a discussion of the affairs of the realm and for the framing of statements of grievances. Sometimes the voting of taxes was conditioned upon the redress of grievances by the king. Only gradually did a true legislative power emerge. At first proposals for reform were submitted to the king in the form of petitions, the actual formulation of the statute being left to him. In England there emerged eventually the procedure by bill which, embodying the exact terms of a legislative proposal that might not be changed, deprived the king of any discretion in the exact statement of the law. The enacting clause of a British statute today: "Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled . . . ," harks back to a time when in theory the king made the law and the estates merely consented and approved. The estates also had judicial powers.

In the evolution of constitutional government the period of monarchical absolutism has been frequently misunderstood as an interruption in the history of the legislative assembly. It was, however, an essential stage in the development of modern constitutionalism. The great function of absolutism in England as upon the continent was to weld the various dissevered and discordant elements of feudal society into a national unity. During this period parliaments and estates general either disappeared or became subservient instruments of the royal will. The emergence of parliamentary institutions in the seventeenth and eighteenth centuries is to be explained not in terms of a revival of the stratified estates general of the Middle Ages, but essentially as modern attempts to give expression to a national will which came into existence only as the result of the centralized and unifying discipline of the absolutist period. There are, to be sure, historical connections between mediaeval estates general and modern legislative assemblies; but in character and purpose they are fundamentally different. The former were feudal, representative of class and corporate interests; the latter are national, serving the ends of unified peoples which have attained national consciousness.

The modern legislative assembly is much more than a mere lawmaking body. Much of its work is accomplished through the procedure of statute making, but in effect many so-called laws do not embody that broad rule or norm which is the essential characteristic of a true law. A primary function of all modern legislative assemblies, not to be confused with lawmaking although incidentally embodying broad legislative policies, is the control of national finances through taxation and appropriations. Another such function is administrative control. In systems of the parliamentary type, like that of England, this is evident. Through parliamentary questions and interpellations, committee investigations and reports, debate upon the budget, votes of lack of confidence and reverses of the ministry on important legislative projects the administration is subjected to a minute and constant oversight. Even in countries like the United States, where the doctrine of the separation of powers theoretically obtains, the legislative assembly performs a most important function of administrative control. The organization and procedure of legislative bodies in the United States are not well adapted to the successful performance of this function. Nevertheless, through committee hearings on appropriation bills mak-

ing provision for the various services and particularly through special investigating committees branches of the administration are from time to time subjected to supervisory control. On a few occasions cabinet members have been forced to resign as a result of congressional investigations. If the conduct of government may be looked upon as similar to the business of a great corporation, the function of the legislative assembly is analogous to that of the board of directors. John Stuart Mill thoroughly appreciated the importance of this function of administrative control and rated it as more significant than that of lawmaking. "The proper office of a representative assembly," he said, "is to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which anyone considers questionable; to censure them if found condemnable, and if the men who compose the government abuse their trust, or fulfill it in a manner which conflicts with the deliberate sense of the nation, to expel them from office and either expressly or virtually appoint their successors."

Other functions which a legislative assembly performs are participation in the revision or amendment of the constitution, the fundamental law of the state; ventilation through its debates of general questions of public policy, serving thus as an organ of public opinion; acting as an executive council to assist the executive; sitting as a high court of justice in impeachment cases; and canvassing the results of elections to its own membership or in some instances to other offices. It is a general principle of public law that every legislative assembly possesses the power of canvassing the election of its members and judging with respect to their legal qualifications. The American constitutions, both federal and state, specifically confer this power upon each legislative body. The manner in which both houses of Congress and those of the state legislatures have exercised this power has frequently been criticized. Election contests are likely to be decided by a party vote regardless of the respective merits of the contestants. The Constitution of the United States permits either house of Congress to exclude a member by a two-thirds vote; but this provision has not been utilized and instead there has been an inclination to deny a seat because of excessive although legal use of money in securing the election, because the person elected is deemed not of good moral character and perhaps for other reasons. In April, 1920, the lower house of the New York legislature excluded five duly and legally elected members, who possessed all the constitutional qualifications, for the reason that they were Socialists; although they were returned to the house in a special election held in September, three of them were excluded once more. The incident constitutes a dangerous precedent in parliamentary procedure and has been generally condemned as threatening the very foundations of constitutional government. It is significant that the English House of Commons, the most powerful legislative body in the world, has transferred to an impartial tribunal its power to pass on the election and qualifications of its members. British experience has overwhelmingly justified the principle that these questions should be judicially determined.

Even in the making of laws the legislative assembly is only one of several governmental and extragovernmental agencies. In the parliamentary system all important legislation is initiated by the ministry and the legislature's function is reduced to mere acceptance, with such minor amendments as the ministry will agree to, or rejection, which is likely to entail a ministerial crisis with all its ensuing consequences. In the United States the executive has a large share in the making of laws. Through his message the president or governor can focus the attention not only of the legislative body but of the public generally upon those matters on which he believes legislation is desirable. The community looks to the executive for an effective program of legislation and holds him responsible for the translation of party platform pledges into legislative enactments. As the leader of his party he is in a position to shape and mold the course of legislation to a very large extent. The executive also possesses in the veto power a direct and effective participation in the formal as well as the actual procedure of lawmaking. The considerable use of the initiative and referendum constitutes a limitation upon the lawmaking function of legislative assemblies from another direction.

Modern legislatures are generally bicameral, the two houses being presumed to represent different cross sections of the general interest (*see* BICAMERAL SYSTEM). Upper chambers have been constituted in a great variety of ways, the underlying purpose of the various devices being to remove them from the influence of the mass of the people. Indirect election and the limitation of constituencies by qualifications of wealth,

class privilege or official position are two such devices. Upper chambers have often rested on the principle of equal representation of the constituent member states in a federation regardless of disparity of population; they have often consisted of a hereditary nobility with no elective element; or their members have been entirely or largely appointed by the executive.

The principle which has determined the composition of the lower house or of the single chamber in unicameral systems has generally and increasingly been that of election by direct, secret, equal and universal suffrage, for relatively short terms. There are two prevailing methods by which members of a popularly elected legislative body are chosen: by single member districts and by a general ticket for larger areas—what the French call *scrutin de liste*. During the Third Republic France has swung back and forth a number of times between these two systems. The single member district system is generally found in Anglo-Saxon countries. The system of the general ticket is common in western Europe, where it is frequently combined with proportional representation. Under the single member district system, when the supporters of one party are largely consolidated in one section of the country, as is the case with the Democratic "solid south" in the United States, this party, although polling an actual majority of all votes cast, may return only a minority of the representatives. The surplus votes in those constituencies which are overwhelmingly of one political faith are in effect wasted. The single member district system is the basis of gerrymandering, of so constructing electoral districts as to give an unfair political advantage to the party which happens to be in power when the districting occurs. In the United States the virtual requirement that members of Congress and of the state legislatures be residents in the districts which they represent seriously restricts the range of choice and results in the loss to the public service of able representatives who have been defeated in their districts but who might easily be elected from other districts; in England there is no such restriction. The residence qualification tends also to localize politics, to enforce upon each representative the narrow view of the effect upon his constituency of every legislative measure instead of encouraging a national point of view.

The internal organization of modern legislative assemblies is primarily based on the committee system. Committees are used in all modern legislative assemblies and their employment has greatly increased as the volume and complexity of legislation have grown. But in governments of the parliamentary type they are merely investigatory bodies useful in relieving the house as a whole of much of the work preliminary to legislation. In the American Congress and state legislatures they actually frame the measures which are presented to the chamber, and they possess the power of determining what bills shall be considered. The real work in American legislative bodies is done in the committees, not on the floor of the house, and a member's influence and importance depend largely on his committee appointments. "Congressional government," said Woodrow Wilson, "is Committee government." In Great Britain the function of legislative control is performed by the cabinet, which from this point of view may be considered as the central and supreme committee of the House of Commons.

The marked increase during the last generation in the amount of legislation and in the complexity and technical character of the questions which arise has led to the creation of various agencies which serve as aids and auxiliaries to the legislative assembly in its work of lawmaking. The most notable of these are the legislative reference bureaus which exist in a number of the American states. These bureaus are staffed by experts highly trained in law, economics and political science. They are nonpartisan. Their purpose is to make available to the members of the legislature all the facts which are relative to any question which may be the subject of legislation, and to this end they carry on constant research between the sessions. They assist the members in the actual drafting of bills, which often requires a degree of technical skill not possessed by the members themselves. Similar bureaus exist in many American cities and perform a like service in connection with municipal legislation. There are three types of such bureaus. Some are voluntary organizations maintained by private endowment; others have been established by the government itself and constitute official departments; while a third class are attached to state and other universities and enjoy a position of academic independence both from the government which they serve and the economic and business interests which private endowments might imply. In England the office of parliamentary counsel to the Treasury assists the ministry in the technical drafting of government bills but does not undertake the investi-

gatory functions of American legislative reference bureaus.

The operation of legislative assemblies depends directly upon the party system as it is organized within the chamber. This is related to the party system in the country at large, but the relation is never very close. Under no system of election is the chamber a perfect reflection of the political divisions among the voters. In Anglo-Saxon countries the two-party system tends to prevail both in the electorate and in the chamber, while in other countries numerous political groups exist, representing a wide variety of attitudes from extreme right to extreme left. The parliamentary form of government presupposes the biparty system in the chamber. It operates normally only when a majority party is in possession of the government and responsible through the cabinet for a program of legislation. The minority opposition party here performs the essential function of criticism. On the continent under the group system there is seldom a single majority party, and the government rests upon more or less temporary coalitions or blocs, which have no counterpart in the electorate at large. The fluctuating character of these coalitions constitutes an element of extreme instability. At times the House of Commons in England has been divided among three parties. As a result the government has had to secure the support of two parties, with a consequent insecurity of its position and a weakening of its program. In the United States, where responsibility for a legislative program is not centralized in a cabinet, party lines in the chamber are seldom sharply drawn. The alignments on important measures cut across party lines. There is an increasing tendency to form blocs, such as the agricultural bloc, the prohibition bloc, the World Court bloc, which have no relation to party divisions. Even such questions as the tariff have ceased to be party questions. Yet the party organization is preserved. The speaker of the House of Representatives is chosen as a party leader; the chairmen of all committees are drawn from the dominant party, which also has a majority on every committee. There is less and less correspondence between the party organization of the chamber and the work of legislation, financial provision and administrative control for which, supposedly, that organization exists.

In unitary systems of government the national legislature possesses in theory the entire lawmaking authority. By delegation regional and municipal bodies may enact ordinances or bylaws within the scope of the powers delegated. In federal systems, on the other hand, the supreme legislative power under the constitution is divided between the national assembly and state legislatures. Each is supreme within its own sphere. In the United States, Congress is given by the constitution certain powers and to the states are reserved all other powers not specifically denied. Originally the municipalities derived their powers from statutes which the state legislature passed, but the tendency during the past fifty years has been to provide in the state constitutions for the adoption of "home rule" charters by the cities, which to a considerable extent give to the municipal authorities a constitutional status and enable them to escape from statutory control by the state legislature. One finds a large degree of parallelism in the organization and procedure of the state legislatures in the United States. There has been an obvious imitation of Congress. All American legislatures are bicameral; in all the upper chamber is chosen from larger districts than the lower; in all the committee system is employed in much the same way as in the national body; one discovers in all the same influence of the lobby, the same subjection to party control, the same tendency to disregard party lines on questions of vital importance.

Probably the most widely prevalent and most frequently discussed tendency in modern constitutional government is the decline of the legislative assembly and the corresponding enhancement of the position and power of the executive. This tendency is as noticeable in England and upon the continent as it is in the United States. Clearly in evidence before the World War, it has expressed itself in even more striking fashion during and since that period. The establishment of executive dictatorships in Italy, Hungary and Jugoslavia furnishes visible examples of a universal loss of confidence in this agency of government. The profound distrust with which legislative assemblies are coming to be viewed is the product of a number of causes. The highly complex and integrated character of modern economic and social organization demands a corresponding integration of legal and governmental control. The problems with which legislation has to deal are becoming more and more difficult, requiring a degree of specialized knowledge and expertness which are possessed only by permanent, administrative officials. With the extension of the scope of government

to include a wide array of public services the business of government is becoming more administrative and relatively less legislative in character. All of these factors are important, but probably the most significant cause is the increasingly unrepresentative character of legislative assemblies.

The theory underlying modern constitutional government is simple, and it was fairly adequate for the relatively simple conditions of the later eighteenth and the early nineteenth century. The basic assumption was that each individual's conduct was motivated by a rational self-interest. Government should be the expression of the collective will of the voters, who for practical purposes are equivalent to the people. The representative body ought faithfully to reflect and give expression to this general will. The enacted law was thus viewed as the formulated will of the people, and the legislative assembly was obviously the best possible instrument for giving effect to the popular will. Today every tenet of this theory of democracy is being questioned. The individual citizen responds to all sorts of motives, some of them far from rational. Legislative assemblies are seen to be conglomerate bodies representing a wide variety of social and local interests and are played upon and influenced by these interests through lobbies and other powerful extralegal organizations.

Generally untouched by the law, these lobbies exercise an influence that cannot be measured. Suspicion of devious and improper methods constantly attaches to the lobby. Occasionally an incident occurs which reveals definitely reprehensible practises. A number of states have enacted laws requiring the registration of all lobbyists and full publicity concerning their activities, but these measures have not proved very effective. On the other hand, the lobby does constitute, albeit in an unsatisfactory form, that representation of interests which legislative assemblies are charged with failing to achieve. Perhaps the solution of the problem of the lobby lies in giving it full legal recognition and incorporating it in some fashion into the actual mechanism of government.

"Nothing short of a new type of legislative body," says Professor C. G. Haines, "and a very much changed form of executive and administrative organization, with a well worked out plan of correlation between the two departments, will render modern governments competent to meet the exigencies of present political, social and economic life." A wide variety of proposals and some actual experiments offer the student of politics material for a study of this problem. The transformation of the legislative assembly into a body more representative of the increasingly diverse interests of the political community has been sought through various plans of proportional and minority representation.

A far more fundamental reform, the system of functional representation (*q.v.*), is proposed by the guild socialists and by such students as Léon Duguit, Harold J. Laski and Sidney and Beatrice Webb. In various forms it has actually been introduced in a limited fashion in several of the revised constitutions of continental Europe. By this system the occupational or economic group instead of the territorial or geographical area is made the basic constituency for the election of members to the legislative assembly. In most of the plans proposed or in practise the body thus chosen does not completely replace the assembly elected by geographical areas. In the proposals of such writers as Laski and the Webbs the functional assembly, while not entirely replacing the existing political legislature, would also be endowed with broad powers of actually making laws in certain fields. The Soviet system in Russia undertakes a complete substitution of the functional principle of representation for that of geographical areas.

On the surface these proposals and experiments would appear to constitute a return to the mediaeval system of class and corporate representation. They are indeed in some instances connected historically with vestigial survivals of the old estates general which were to be found in certain communities down to the World War. They are, however, essentially radical departures from the system of constitutional government under which the modern national state has been organized. Should they succeed in winning a permanent and significant place in the mechanism of government, their advent will constitute a new and important stage in the evolution of legislative assemblies.

W. J. SHEPARD

UNITED STATES. *Congress*, the national legislative body, is bicameral, with a House of Representatives chosen for a two-year term on a population basis and a Senate composed of 2 senators from each of the states, elected for six years, with the terms of one third of the membership expiring biennially. This arrangement was one of the great compromises agreed to in the Philadelphia Constitutional Convention,

when the more populous colonies argued for representation in proportion to population, while the smaller ones wished to retain the equal representation provided for in the Articles of Confederation.

The Senate was given some special functions of an executive and judicial character, including confirmation of appointments, ratification of treaties and trial of impeachments. It was to have legislative power equal with that of the House of Representatives, except that bills for raising revenue must originate in the body which was closer to the people—a provision which in practise has come to mean that the enacting clause must originate in the House. The Senate can and does amend finance measures beyond all recognition. Impeachment proceedings are brought in the House of Representatives with the Senate acting as a high court to try them.

The framers of the constitution intended the House of Representatives as the more popular to be the more powerful body in the congressional system. That hope was in a measure realized so long as the number of representatives remained small. The first House had 65 representatives—one for every 30,000 inhabitants not including Indians not taxed and including slaves, five slaves counting as three free men. After each decennial census, however, with only two exceptions the House has grown in size despite the fact that the number of inhabitants per congressman has constantly increased, reaching 211,877 in 1910. No agreement on the size of the House was possible after the census of 1920, but a law passed in 1929 kept the number of representatives at the 1913 figure of 435 for apportionment under the census of 1930. As a result of shifts of population twenty-one states lost from 1 to 3 representatives and eleven states gained from 1 to 9 each. This figure 435 makes the House of Representatives smaller than the lower chamber of England, France or Germany, but as its numbers have grown its strength vis-à-vis the Senate has decreased.

As a result of the greater complexity of legislation and the unwieldy size of the House legislative committees have become more and more important. Debate on the floor is used now more and more not to influence votes but for its effect on the galleries and newspapers. Increasingly rigorous leadership has been necessary, but it has been an irresponsible leadership, which has accelerated the decline of the authority and influence of the House. The speaker unlike his British model is a party leader, sharing his control of the House with the majority members of the rules committee, the floor leader of the majority and the steering committee. The great power of the speaker with regard to recognition of representatives and appointment of committees and its autocratic exercise by a succession of speakers led to the revolt against Speaker Cannon in 1910. Thereafter the speaker individually has not been so powerful and his former control over legislation is now held by the combined leadership of the House.

The House has also suffered somewhat because of its excessively local basis. The constitution stipulates only that a representative must be an inhabitant of the state from which he is chosen. This by a rarely broken custom has been taken to mean that a representative must be an inhabitant of the congressional district from which he is elected. In Great Britain the absence of any such constitutional or customary requirements has been a great safeguard against parochialism and has helped to keep up the level of ability in the House of Commons. The House of Representatives has suffered from the opposite tendency. The representative is too much inclined to think in terms of his own district rather than to take a national view of questions. Senators also represent their specific states, but the area of these constituencies is larger and the term of service is three times as long. Moreover a representative is elected in November and does not begin his work normally until December of the following year (there may be a special session any time after March 4) and then must stand for reelection in November of the next year. He must therefore always be building his political fences. Living in the shadow of his constituency he can never be unmindful of the repercussions which his congressional activity may have in his district.

This congressional calendar means also that the so-called short session of every Congress contains a number of "lame ducks"—representatives, that is to say, who have failed of reelection but who continue to legislate for three months. There are lame ducks in the Senate also, but the anomaly is more frequent and more bitterly complained of with regard to the House of Representatives. The House was reluctant to show any interest in reform. Five times the Senate by overwhelming majorities favored a constitutional amendment abolishing the short session of Congress, bringing a new House into session two months after election and providing for the inauguration of the president after a two

months' rather than a four months' delay. But up until 1932 the House was unwilling to abandon for a faster schedule arrangements which had been made in the days of the stagecoach, when it took weeks to reach Washington from the outlying sections of the country. In March, 1932, a resolution proposing such a constitutional amendment was finally passed by the House and submitted for ratification to the state legislatures.

These are some of the reasons why the House of Representatives has not fulfilled the hopes of the founding fathers that it would be the more powerful branch of Congress. In addition to the advantages inherent in its small membership and in the freedom of debate on which it insists the Senate has gained authority as a result of its special functions. Impeachment has been little used, but as a check on the president's appointing power and as the body associated with the president in treaty making the Senate has been far more powerful than the framers of the constitution expected it to be.

The intention of the framers to make the Senate a sort of executive council acting in rather regular collaboration with the president has failed of realization because senators and the president are party men as well as statesmen and because the Senate prefers to be a check rather than a collaborator. Separation—even antagonism—has become more and more pronounced. The Senate looks upon itself as the body which can save the country from the disasters with which it is threatened through treaties negotiated by the executive. While the Senate rarely objects to cabinet appointments, there has developed what is known as "senatorial courtesy" in cases of lesser positions. This means that the Senate recognizes the right of each of its members to approve presidential appointments from his state. The extremes to which this practise is occasionally carried serve to reduce the standing of the Senate with the country.

It is difficult to gauge "standing" or "influence." It is reasonably clear, however, that in the period immediately before the adoption of the Seventeenth Amendment—providing for the election of senators by popular vote rather than by the state legislatures—the Senate was declining rather decidedly in prestige. There were too many cases in which legislative election had been secured by improper influences. The period of popular election has been too short to warrant generalizations as to the effect of the change on the quality of the Senate and the kind of senators who have been chosen, but there is one curious result, which is doubtless more extreme than it would have been if the original method of legislative choice had been adhered to. To a far greater degree than the House of Representatives the Senate is hospitable to insurgent causes. The longer term is an encouragement to independence, and the fact that 1 of 96 members of a legislative body which does not limit debate can always get some kind of hearing is an incitement to irregularity. For irregularity is much more dramatic than standpattism and is more easily translated into prominence.

If the Senate were recruited on the basis of population with no state having fewer than 2 senators, New York would have 270. Eighteen of the smaller commonwealths just about equal New York in population and from these small states come a number of the "insurgent" senators. The phenomenon is in some ways reminiscent of the rotten boroughs which, it was boasted, sent some of the most influential British statesmen to the House of Commons. From another angle the Senate presents the paradox of giving more adequate representation to the agricultural interests of the country than does the House of Representatives.

Insurgent senators have been prime movers in the recent increase of senatorial supervision over executive and administrative activity. This may be because of the character of the particular senators or because their constituencies have such a political complexion that they would in any event send representatives to Washington who were more or less irregular. Whatever the explanation of the leadership, the fact is that as a critic of the executive the Senate has come to play a more and more important role. A party majority cannot suffice to protect a president and his administrative officials, since freedom of debate in the Senate permits filibustering which may delay a legislative program. A small group may therefore coerce a majority into accepting its investigating program as the price of adhering to the legislative time table. The right of any senator to speak out at well nigh any time on what he conceives to be maladministration may persuade a party majority or the executive to conclude that an investigation which elicits facts is preferable to an auto-da-fé of innuendo and rumor.

Here also as well as in the matter of appointments senatorial courtesy is not unimportant. Certain senators may at some future day wish investigations of their own. Consequently even though they may not desire them they are in-

clined not to object to investigations demanded by their colleagues. Misused on occasion, looked upon frequently as an avenue of personal publicity for particular senators concerned only secondarily with improvements of administration, the inquisitorial power of the Senate is nevertheless of the highest importance. With the House of Representatives in bondage to its leaders, with debate there rigorously limited, the Senate is the only forum in which there can be criticism of the executive. Only through its committee investigations can the United States Congress exercise some supervision over the executive comparable to that day by day scrutiny of administrative action which must be endured by executives under a parliamentary system.

In most European systems the more popularly elected branch of the legislature is decidedly more powerful than the upper chamber. Even when both branches are elected the lower chamber is usually more influential. In the United States Congress the Senate is by all odds more influential than the House of Representatives; nor does the country manifest any desire to disturb this balance, although there is much criticism of the action (or more frequently inaction) of the Senate on treaties and of its hostility to the president. In short, the Senate because of its special executive functions, its inquisitorial activities, its coordinate legislative powers, its partial renewal and its constantly increasing corporate *amour propre* is perhaps the most powerful legislative chamber in any system of popular government.

For these reasons in part we have the phenomenon—peculiar to the United States—of men leaving cabinet posts to serve in the Senate or declining to leave the Senate for cabinet posts. Membership in the House has ceased to have the attractions which it had, say, when John Quincy Adams after serving as president was elected as a representative. One reason is that representatives do not compete for political prizes—that is, executive posts—as do members of the legislature in a parliamentary system. The rules prevent them even from achieving prominence. With only 96 senators, on the other hand, and with freedom of debate any senator can become prominent. Hence representatives are always anxious for promotion to the upper chamber, which drains the House of some of its best men.

Representatives nevertheless serve for a larger number of consecutive terms, and the turnover is not large. When the Seventieth Congress convened, for example, of the 435 members of the House only 53 were novices. It frequently happens that as many as 15 state delegations—including sizable ones—are unchanged as the result of an election. In the Sixty-ninth Congress, on the other hand, one half of the senators were serving their first terms. The fact is not sufficiently realized moreover that when the House of Representatives swings from one party to another it does so because of changes in a relatively few "doubtful" districts. Dr. Paul D. Hasbrouck in *Party Government in the House of Representatives* (ch. ix) has tabulated the results of seven congressional elections from 1914 to 1926 inclusive. This period was a fluid one in American politics. For these seven elections 122 districts were always Democratic and 148 were always Republican—62 percent of the total. Hence the real struggle for the control of the House of Representatives was concentrated in barely more than one third of the congressional districts. The results of these contests determined whether the House was to be Democratic or Republican. The south is the most solid area and next comes New England. The west central, central and Pacific states shift their congressional allegiances with relative infrequency. The largest percentages of change are in the middle Atlantic, the mountain and the border states. Control of the Senate likewise passes from one party to another because of the results in doubtful states. There is a good deal of undebatable territory in senatorial elections also and the accident of whether the biennial choices of one third of the Senate occur in safely Democratic, safely Republican or doubtful states has great influence on the composition of the upper chamber. The verdict of the country may be the verdict of no more than sections of the country.

In quantity of legislation Congress probably leads all other representative assemblies. At the second session of the Seventy-first Congress (December 2, 1929, to July 3, 1930) 8223 bills and resolutions of various kinds were introduced. House committees reported 1918 items, of which 1403 were acted upon in some way. The statute book was enlarged by the addition of 518 public laws, 84 public resolutions and 281 private laws and resolutions. Congress was in session 156 days. Figures such as these grow larger and larger despite an increasing tendency to delegate legislative authority to the executive. In part the burden is much greater than it should be because of an unwillingness to permit private bill legislation and claims to be handled

by a special procedure, as is done in Great Britain. In part also, as has been said, the meager opportunities which Congress has for informing itself of and criticizing executive action mean that it attempts to make legislative restrictions on administrative discretion more and more severe.

The personnel of Congress is recruited from a rather narrow occupational basis. More than half of the senators and nearly two thirds of the representatives are lawyers. Merchants, farmers and journalists are next in order but none of these runs to more than 10 percent. In comparison with the House of Commons or the French Chamber of Deputies with their sharp class divisions the congressional situation is striking. Labor is practically unrepresented. At the other end of the scale the rentiers are few. In short, it may be said that Congress is controlled by lawyers and modest lawyers at that, for those with lucrative connections rarely try to enter Congress. As might be expected from the unreal party groupings in the United States, it is the middle class, the bourgeoisie, rather than the aristocracy, the plutocracy or the proletariat which is represented in the American legislature. Nor are there many so-called intellectuals in Congress. All of which may be said to result from the conservatism of the two major parties, the weakness of third party movements, the choice of the cabinet outside of Congress, the fact that business and the professions are a greater lure to ability than is public service, the connection of residence with representation, and the size of the country.

Of late it has become increasingly fashionable to complain of Congress and to sneer at it. One reason is the lack of responsible leadership. Another is the president's ability to command the avenues of publicity. Business in Congress is so complex and so uninteresting in its details that issues must be highly important to attract much attention. Ordinary routine is exciting to the newspapers only if it is disorderly or humorous. There is usually much bipartisan voting, with rarely a clear clash of parties. By and large, however, in contests with the president Congress is as frequently on the side later approved by the country as is the executive. In such controversies Congress frequently has a bad press, since the congressional case must be constructed from a variety of converging views which may be indifferently expressed, while the executive is able to put before the country a clear, simple case. Nevertheless, it may be said that in general Congress adequately represents the country, that under strong presidents who furnish real leadership it is complained of less frequently than under weak presidents and that on an average its collective intelligence is not measurably inferior to the intelligence of the average president.

LINDSAY ROGERS

STATE LEGISLATURES. The legislative departments of the state governments are organized and operated in accordance with the provisions of the state constitutions. In each of the forty-eight states the constitution now in force provides for a department of legislation consisting of two branches, in which the legislative power is vested. The structure of these two branches, generally called the senate and house of representatives, and the mode of electing their members are always definitely prescribed and the legislative process in each branch is more or less carefully regulated. But the meaning of the term state legislature has never been precisely defined, and the nature of the legislative power still remains to be fully explained.

There are several references to the legislatures of the states in the federal constitution. It is provided that the time, place and manner of electing United States senators and representatives shall be prescribed in each state by the legislature thereof, and in 1932 the United States Supreme Court decided that for the purposes of this provision the state legislature includes the governor in so far as his approval is required by the state constitution for the adoption of legislative enactments (Smiley *v.* Holm, 285 U. S. 355). But the approval of the governor has never been required for the ratification of amendments to the federal constitution by a state legislature, and the United States Supreme Court has decided that the state electorate is not included in the legislature in states where legislative enactments may be referred to the voters for their approval in accordance with provisions of the state constitutions. It has not yet been determined clearly what is meant by the term legislature in the provision of the federal constitution which relates to the granting of consent on behalf of a state to a division of the state or to its junction with another state, but apparently the term does not include the governor in the provision relating to applications by state legislatures for federal protection against domestic violence.

The nature of the legislative power is likewise

ill defined. The state constitutions unlike the Constitution of the United States do not undertake to enumerate all the powers which are conferred upon the legislative department of the government, nor do they attempt to define legislative power. Many powers conferred upon the legislatures are specified in the state constitutions; many others, which seem to be legislative in their nature, are specifically denied; and numerous legislative enactments are contained in the state constitutions themselves. But the nature of the power, as Jefferson suggested in his *Notes on Virginia*, must still be left to the determination of "reason"; that is, of the state and federal courts. Jefferson himself expressly denied that reason was to be governed in this matter by the precedents established in England and in the American colonies before the revolution. But colonial experience, as reflected in the prevailing notions of the American people at the time of the revolution, undoubtedly exerted a preponderant influence upon the development of the concept of legislative power. The colonial assemblies had been generally regarded as the strongest bulwarks of popular liberties, and the destruction of royal and parliamentary authority by the revolution swept away the principal barriers to the uncontrolled supremacy of the department of government in which the people reposed the greatest confidence. Despite the general adoption of constitutions in the original states, proclaiming the doctrine of the separation of powers as the foundation of the American political system, the checks which were introduced upon the authority of the legislatures were wholly inadequate, except in New York and Massachusetts, to establish an effective balance between the three governmental departments. The original state governments were mostly governments characterized by the practical supremacy of the legislatures and the constitutional predominance of the legislative power.

The subsequent constitutional history of the states has been largely the history of the introduction of further checks upon the power of the legislatures and the establishment of a more stable balance between the departments of state government. These checks have taken various forms. In the first place, the authority of the legislatures has been checked by the grant of powers to the other departments of state government. The legislative power of the executive department has been strengthened by the establishment and expansion of the gubernatorial veto, by the adoption of the executive budget and by the development of executive leadership in state politics. The authority of the legislatures has been further curtailed by the development of the power of judicial review of legislation and by the introduction of processes for direct legislation by the people—the initiative and referendum—and for local and especially municipal home rule. The state legislatures have lost power also in consequence of the growth of federal centralization, especially through the expansion of the authority of Congress under the interstate commerce clause and of the Supreme Court under the Fourteenth Amendment. Originally the state executive and judicial officers in many states were dependent upon the legislatures for their elections and were incapable of exercising freely even the powers which were recognized as non-legislative in character, but the universal adoption of the system of direct popular election of executive officers and the general adoption of direct popular election of judges gave these departments the necessary independence for a vigorous exercise of their powers, both legislative and non-legislative. Thus the effective separation of powers called for by the original theory of state government was gradually established in practise, and a workable system of checks and balances brought into existence.

Secondly, the authority of the legislatures has been restricted by the adoption of direct constitutional limitations upon legislative powers and procedure. These limitations have grown out of the abuse of power by the state legislatures and have generally been designed to redress specific grievances. Illustrations of substantive limitations upon legislative power are the prohibitions against granting pardons or divorces by legislative act, the prohibitions against taxing property at other than uniform rates and the prohibitions against special private and local legislation where general laws of uniform application may be enacted. Procedural limitations upon legislative power have become even more important than substantive limitations. Illustrations of such limitation may be found in the requirements that a bill shall relate to but one subject, which shall be fairly described in the title; that all bills shall be read in full on three separate days in each house; that the yeas and nays shall be recorded on demand of a certain number of members; that bills shall not be introduced after a certain number of days following the opening of a legislative session nor within a certain number of days of the close of the session; that proposed amendments shall be

printed for the use of members before a final vote may be taken; that no bill shall be considered for final passage unless previously referred to a committee and reported therefrom; and above all that no person be deprived of life, liberty or property without due process of law or denied the equal protection of the laws. Furthermore the authority of the legislatures is limited indirectly by the restriction of the frequency and duration of legislative sessions. In most states regular sessions are held biennially and may extend from forty to ninety days. In a few states these limitations are supplemented by penurious restrictions upon the payment of legislators designed to discourage them from meeting for more than the prescribed minimum period.

These extensive constitutional limitations upon legislative power and procedure betray a deep and persistent distrust of the state legislatures. The principal causes of this distrust have been the predominance of personal and local interests over the general welfare in legislative deliberations, the inability of the legislatures to avoid needless extravagance and waste in the management of the state finances and their practical incapacity to protect the public interests against invasion by powerful special interests. Despite these constitutional limitations the volume of private and local legislation of a special nature continues excessive in many states and the volume of public general enactments reveals the incompetence of the legislatures to exercise effectively the powers which they have been permitted to retain. The state law index, which is prepared by the Library of Congress and contains an index and digest of the legislation of the states, shows that in the course of a typical biennium the state legislatures pass some sixteen thousand acts, filling more than twice that number of pages in the statute books. This does not include the bills passed by the legislatures but killed by executive vetoes, of which in one recent year there were more than a thousand. In addition the governors killed parts of another thousand bills without destroying the bills in their entirety. Of the bills vetoed by the governors in this year fewer than 10 percent were reenacted by the legislatures, and it is probable that this high mortality of state legislation is no more than normal. Bills are frequently vetoed, not only because they seem to the governors inexpedient but also because they are duplicates of other bills previously enacted or are defectively drawn or are for purposes which can be properly accomplished under general laws or should be provided for, if at all, by amendments to general laws. In addition a substantial number of bills are declared unconstitutional each year by the state and federal courts, either because they exceed the powers of the state legislatures or because they have been enacted in an improper manner. A few years ago this number apparently ran nearly as high as a hundred bills per annum, including the decisions of all the state and federal courts, and it is probably higher at the present time. Finally, a number of bills are vetoed each year by the voters themselves at the polls and a number are adopted without the approval of the legislatures. It is difficult to avoid the conclusion that despite all the efforts to improve the quality of state legislation the work of the legislatures continues to be less efficient than the people have a right to demand.

Dissatisfaction with the work of the legislatures sustains the efforts of those critics of state government who urge further changes in legislative organization and procedure. At present all the states have bicameral legislatures in which the most important difference between the upper and lower houses consists of the greater number of members of the latter. The number of state senators ranges from 17 in Delaware and Nevada to 67 in Minnesota, but most of the senates have from 30 to 50 members. Most of the lower houses have from 100 to 150 members, but the number ranges from 35 in Delaware to 419 in New Hampshire. In nearly all the states the members of the lower house are elected biennially for terms of two years and in nearly two thirds of the states the senators are elected for four-year terms, half of which expire every second year. In most states the county is the unit of representation, and one or more representatives are elected from each county in accordance with their respective populations. Larger districts for the election of senators and districts for the election of representatives in states with numerous small counties are formed by the union of the counties. In some states, however, large cities may be divided into legislative districts, as for the choice of congressmen. In general the existing systems of legislative districts favor rural areas and result in considerable underrepresentation of urban populations. In some states this discrimination against urban areas deprives the majority of the people, living in the cities, of their proper influence in state government and encourages serious abuse of

power by rural minorities. In most states the temptation to form legislative districts with a view primarily to partisan or local or even personal interests has resulted in grave evils.

Legislative procedure is much less uniform than legislative organization. In all states much use is made of standing committees for the consideration of measures before their discussion by the legislative houses; but wide differences exist in the number of such committees, in the number of members of the regular committees and, most important of all, in the privileges of the committees under the regular rules of procedure. The national House of Representatives at Washington has developed rules under which the important committees when supported by the majority party are able to dominate the House and reduce the individual member, as far as public general bills are concerned, to the position of a mere cog in a machine. The power of the machine is fortified by the classification of business, the limitation of the time for debate and the effective leadership of certain members, especially the speaker, the chairman of the highly privileged Committee on Rules, the chairmen of other privileged committees and the regular floor leaders of the two great parties. In the United States Senate, on the other hand, the senators have jealously guarded their personal liberty and have consistently refused to grant special privileges to committees or to impose limitations upon the freedom of debate which would seriously restrict the independence of the individual senators. The modes of transacting business in the two branches of Congress represent the two extreme types of legislative procedure. There is no state legislative body in which the individual member is reduced to such helplessness as in the national House of Representatives and none in which he is more powerful than a United States senator. The development of rules in accordance with the practise at Washington has gone further in New York than elsewhere. At Albany an ordinary assemblyman has a little more liberty than an ordinary congressman, but a New York state senator is much less free than a senator at Washington. Although the New York senate rules like those of the federal Senate do not permit a motion for the previous question, there is provision for the closure of debate in more effective form than at Washington. In many states where the rules of procedure seem more favorable to the individual legislator the constitutional limitations on the duration of legislative sessions and the consequent pressure of business, especially toward the close of a session, create the conditions under which legislative machines flourish as in New York and in the national House of Representatives.

Many different proposals have been offered for the improvement of the structure of the state legislatures and of the process of legislation. The most radical proposals have called for the abandonment of the bicameral system and the election of a single legislative body by some form of proportional representation. These proposals have been associated with general plans for the systematic reconstruction of state government, involving the reform of the executive and even judicial branches as well as the legislative. They have not yet received the serious attention of the public. Less radical proposals would equalize the representation of urban and rural areas and substitute joint standing committees of the two houses for separate committees in each house. This is the Massachusetts plan of legislative organization. Combined with the requirements that all committees hold public hearings on all bills, that all bills be reported by the committees to the legislative houses for final action and that the legislature remain in session until its business is finished this plan produces better results than the usual system of legislative organization and procedure. In Massachusetts also the registration of legislative agents and legislative counsel inaugurated methods of regulating the lobby which have been adopted in some other states. In Wisconsin pioneer work has been done in the development of legislative reference and bill drafting services, which have been widely copied with good results. In California and West Virginia experiments have been made with the so-called split session of the legislature. In these states it was provided that the legislature should sit for a limited time for the purpose of receiving bills and resolutions proposed for adoption, then adjourn in order that the public might have time to examine these proposals and express an opinion upon them and finally reassemble for further deliberation and action. Restrictions were placed upon the introduction of new measures in the second part of the split session. The experiment was soon abandoned in West Virginia, however, and seems to have accomplished little in California.

The most successful reforms in the legislative process have been those which have relieved the legislatures of duties for which they were not well suited by delegating authority to adminis-

trative agencies. The establishment of state railroad and public service commissions, for example, withdrew from the legislatures the burden of regulating in detail the rates and service of public utilities. The enactment of general corporation laws and the establishment of corporation commissions have reduced the demand for special acts of incorporation and special regulation by statute. Banking and insurance commissioners have taken over much of the responsibility for the regulation and control of those important branches of business. Civil service commissions have relieved some legislatures of a part of their former preoccupation with administrative appointments. The adoption of municipal home rule and the creation of state boards of equalization and state tax commissions have reduced the demand for legislative intervention in local affairs. In short, the most promising method of improving the legislative process has proved to be not the constitutional limitation of legislative powers and procedure but the wider utilization of administrative processes in cases where discretionary authority must be exercised in matters of technical detail. Thus the improvement of state legislation seems to be bound up with the creation of a competent and responsible administrative system. The state legislatures despite the American tradition of the separation of powers cannot be treated as independent parts of a governmental machine but must be recognized as organs of government with functions and consequently powers which are conditioned by the nature of the whole political organism.

ARTHUR N. HOLCOMBE

GREAT BRITAIN AND DOMINIONS. The British Parliament has never been a mere legislative assembly and that fact has determined its organization, power and influence. At the outset Parliament was a consultation of the mediaeval king with his tenants in chief. Administrative and judicial rather than legislative, it was composed of members who represented only their own interests and who considered this collaboration a burden rather than a privilege. In the thirteenth century, however, for the better securing of money the king summoned representatives of the new rising classes—the knights of the shire and the burgesses of the boroughs—to special meetings of his feudal council. Among the representatives comprising the so-called Model Parliament of 1295 there were also 2 archbishops, 70 abbots and other heads of religious houses, 7 earls and 41 barons; but it is not clear, however, on what principle the selection was made. Spiritual and temporal lords received their summons by virtue of their feudal function as tenants in chief of the crown and did not constitute in the beginning a hereditary body. It was not until the end of the Middle Ages that the House of Lords clearly emerged with peers differentiated from the council on the basis of a theory of peerage. In the Parliament of Henry VII there were 49 spiritual peers and 29 lay peers. After the disappearance of the abbots with the dissolution of the monasteries the spiritual peers were reduced to 26. There were 56 temporal peers in 1597, 78 in 1604, 142 in 1661.

By the time of Edward III there was a separate House of Commons consisting of the knights of the shire, the burgesses of the boroughs and the lesser barons sitting apart for the informal discussion of the business they were formally to transact as part of the full Parliament. Of the organization of the House of Commons in the Middle Ages little is known. By the end of the fourteenth century it had secured the initiative in finance because of the inability of the king to live on the proceeds of his own feudal estates. Control over legislation was more difficult, inasmuch as the crown possessed its own prerogative powers of legislation. Although by the end of the fifteenth century all legislation was passed "with the advise and consent of the Lords Spiritual and Temporal and Commons" and although the King's Council was sometimes controlled by Parliament, the sporadic parliaments of the period were in the main devices for registering formally the exercise of feudal powers.

But by the sixteenth century the faint outlines of the future British Parliament began to be discernible. The House of Commons was mentioned in the dispatches of ambassadors as a power of importance. It kept a journal of its own proceedings. Its voice in the Parliament was no longer limited to its speaker: equality of all members before the House was firmly established as well as the method of taking a vote at the conclusion of debate. Seats in the House became valuable enough to justify bribery and election promises. Members of the King's Council and the sons of peers became members. The Tudors with a hostile peerage and the Reformation to carry through were glad to use the House as an instrument of the royal will. Although they were intensely jealous of their royal prerogatives—executive, judicial and legislative—and brooked no interference with the selection of

royal councilors they found it expedient to secure for the laws which had been drafted by the judges in council confirmation by Parliament.

As a result of the constitutional struggles of the seventeenth century it was definitely settled that sovereignty should rest with the king in Parliament and not with the king alone or with the king in council. The Revolution of 1688 secured the "freedom of men under government to have a standing rule to live by common to every one of that society and made by the legislative power erected in it" (Locke). But this civil liberty was neither religious, social, political nor economic liberty. The Revolution of 1688 was the victory of a landed aristocracy which found it convenient throughout the eighteenth century to rule through a House of Commons whose membership it largely controlled. The power of nomination to a seat in the lower House was a piece of property publicly auctioned (*see* ROTTEN BOROUGHS), and despite its glaring anachronisms the system survived, chiefly because it provided for the representation of new wealth. If Walpole and the younger Pitt went far toward teaching the House of Commons its dominant position in the state, it was not until the Reform Act of 1832 that the power of the king and the traditional ruling families was broken and the older constitutional balance between crown, Lords and Commons seriously shaken. Although the Reform Act of 1832 broke the spell of the fear of change, the extension of the franchise has been gradual. The year 1832 added 49 percent to the electorate; 1867 added 88 percent, or 900,000; 1884 added 1,800,000, or 67 percent. In 1915 there were over 8,000,000 on the register. The year 1918 added 13,000,000 new voters, including for the first time women over thirty; 1928 added over 5,000,000 new voters by extending the franchise to women of twenty-one.

In spite of these numerous modifications of the electoral system the House of Commons remained throughout the nineteenth century predominantly aristocratic in character. Since the Revolution of 1688 it had been the social center of London, and as late as 1860 it was still the custom for a great peer to devote at least one of his sons to the service of his country and the defense of his order in the House of Commons. Despite the abolition in 1838 of the property qualification for membership aristocratic control tended to persist by reason of the expense of elections and the importance of influence, corrupt or social. Bribery was not seriously restrained by legislation until 1854 and not effectively until 1883; and the secret ballot was not adopted until 1872. In the House of Commons of 1880, 155 members were the sons or near relatives of peers. Although the extension of the franchise was accompanied by the development of party organization and the dominance of the cabinet over the House of Commons, the grip of the aristocracy on the chief political offices of the state relaxed only slightly during the nineteenth century. Before the Reform Act the king's advisers, who by the late eighteenth century had become nominally responsible to Parliament, were with few exceptions members of the House of Lords and acceptable to Parliament because acceptable to the king; and even after the introduction of a more formal cabinet technique the older tradition persisted.

The rapid decline in the power of the aristocracy in the present century may be attributed to profound changes in the character of the membership of the two houses, which in turn reflect broader transformations in the economic life of the nation. In 1837 there were 432 members of the House of Lords, in 1931 the number had risen to 731. There was a very rapid increase after 1880 when the new financial and industrial wealth joined the great landowning families in the second chamber. As a result of this rapid increase, and the conservatism of the chamber, the prestige of the House of Lords declined markedly. The decline would have been greater if five sixths of its members were not usually absentees. Since the Parliament Act of 1911 the Lords have had no power in finance and a mere suspensive veto in ordinary legislation. On the other hand, the predominantly aristocratic character of the House of Commons was basically transformed as a result of the growing ascendancy and influence of entrepreneur and labor groups within the state. In the 1924 House of Commons, for example, 25 percent of the 615 members were closely connected with industry, commerce or finance, 21 percent were practising lawyers and 14 percent were trade unionists; while an analysis of the membership of the cabinet in the twentieth century reveals that the great majority of the important administrative and executive offices are filled by bourgeois or labor members of the lower House, since it is there that the cabinet ministers must defend their policies.

The procedure of the House of Commons is the result in large part of its long struggle with the crown and with the House of Lords over

control of finances. In the sixteenth century the speaker was the intermediary between the king and the House and managed the king's business, sometimes deliberately confusing the Commons by his method of framing questions. By the device of the Committee of the Whole House, however, the Commons found a way to get him out of the chair, and by a refinement of this device in the form of a Committee of Supply and a Committee of Ways and Means was able to exert a more effective pressure in financial matters involving appropriation and taxation. To secure the complete establishment of financial control it was essential that the House of Commons should have authority over the raising and spending of all public moneys, should exclude the House of Lords and should secure effective control over the government of the day. As a result of the Revolution of 1688 the king lost control over revenue and taxation; while the House of Lords by the legislation of 1671 and 1678 had been shorn of all its powers both in initiating and in altering financial measures. When in 1909 the Lords challenged this principle by rejecting the Finance Bill of 1909 the Parliament Act was passed, under threat of the creation of sufficient peers to swamp the opposition in the Lords, "to secure the undivided authority of the House of Commons over finance, and its predominance in legislation." By this act the Lords have no power to amend or reject a bill certified by the speaker to be a money bill.

A second factor determining the procedure in the House of Commons has been the press of business in the modern state. When in the seventeenth century Parliament found itself confronted for the first time with the active responsibility for the conduct of public business it tended to shift the problem on to the shoulders of the speaker; and although in the eighteenth century the power of the speaker in determining the order of business gradually dwindled until he had become an impartial servant of the House, the procedure of the House of Commons remained essentially unchanged down to the middle of the nineteenth century, still heavily shackled with precedents from a less complex political era. During the latter half of the century, however, the determination of the Irish Nationalists under Parnell to wreck the parliamentary system, combined with the increasing pressure of public business, compelled a drastic reform—and continuous modification of House rules from 1880 to the present day. By the devices of the closure, the guillotine and the "kangaroo" the cabinet, provided it has a majority to support it, can control every stage of public business and in fact now takes more than four fifths of the time of the House. Five standing committees nominated by a Committee of Selection consider the detail of the majority of bills. Only very controversial bills are considered in Committee of the Whole. The stages for a public bill are: formal first reading, general debate on the second reading, committee stage, report stage and third reading. Few bills are passed that are not either government bills or bills introduced by private members which have received the approval of the government. Private bills, that is, bills which affect a local or particular interest, are dealt with by a special procedure which assures a judicial hearing to the interests concerned.

This pressure of modern business has seriously affected the control of the House of Commons over financial measures and has eliminated all possibility of really effective control in this sphere over the government of the day. But the procedure of the House does provide that the government of the day shall have control over its own finances and that the House of Commons shall be able to detect gross extravagance or fraud. The essential principles are that no taxes are levied and no expenditure is incurred save under the authority of Parliament and that all financial business whether directed to the raising or the spending of funds is originated by the crown alone; that is, by the cabinet. The convention that the initiation of financial measures is the exclusive prerogative of the ministers insures the balancing of the annual revenue and expenditure; for the chancellor of the Exchequer, informed by the expert civil service of the estimated expenditure and the estimated revenue from proposed taxation, is in a position to coordinate them.

The House cooperates with the government in the discussion of expenditure and taxation through two committees of the whole House: the Committee of Supply, which authorizes yearly expenditure; and the Committee of Ways and Means, which prescribes taxation and draws up the finance bill, legalizing the collection of the necessary taxation, and the appropriations act, authorizing expenditure on certain specific purposes and those purposes only. These committees can neither review the estimates nor criticize with any effectiveness the proposed taxation, for even if they have the knowledge

they cannot be given the time. The House of Commons never reduces on financial grounds any estimates submitted to it. Since 1862 there has been a select Committee on Public Accounts and since 1866 a comptroller and auditor general, a permanent official responsible for reporting to it. This non-partisan committee of fifteen members, whose chairman is drawn from the opposition, conducts a postmortem examination into the expenditure of government departments and thus serves to secure economy in the carrying out of policies already decided upon. A small committee intended to criticize the estimates has not been a success. To be effective it would have to criticize the estimates before they were presented, and since such action would strike at the responsibility of the cabinet it has been confined to the criticism of the estimates after they have been voted.

The rules of procedure in the House—a vast and intricate body of custom law interpreted by the speaker—remain in operation even when the written law of standing orders is suspended by the vote of the House. A new speaker is chosen from the party in power, but he does not change with the government of the day and he is reelected in every Parliament until he retires, usually with a peerage. He takes no part in elections, being by agreement returned unopposed. When the House is in committee the chair is taken by the chairman or deputy chairman of Ways and Means or by one of a panel of five chosen by the speaker. Unlike the speaker these are party appointments made anew with every change of government. At the commencement of each Parliament the speaker formally claims from the crown for the Commons "their ancient and undoubted rights and privileges."

The supremacy of Parliament, the responsible cabinet and the organization of parties have grown up together. The beginning of the nineteenth century witnessed the first appearance of His Majesty's Opposition. This marks the beginning of the modern period, for while the crown was still a vital part of the working constitution opposition was hardly respectable. The most significant thing about the position of parties in relation to the House is that they have never been organized to control the constitution from outside Parliament. The extension of the suffrage in the nineteenth century compelled the great parliamentary leaders to organize party machinery, but the control of policy has remained with the parliamentary leaders and has not passed into the hands of the party organizer. The management of parties in the House is the duty of the "whips," who are all members of the House. The government whips hold paid government office; the chief whip is parliamentary secretary to the Treasury and the others are junior lords of the Treasury. The opposition has its whips who are not salaried; these together with government whips and with the assistance of the speaker perform vital functions in the ordering of business and the staging of debates.

The world wide influence of the British Parliament has been due to the fact that it was the first machinery of government to offer a practical alternative to the rule of enlightened despots. In the seventeenth and eighteenth centuries it was the one working non-arbitrary government to which speculative political philosophers could point. They did not, however, understand its real functioning. The British Parliament like its sister institution, the common law, had at the end of the eighteenth century every defect that aristocratic self-interest and an uncritical traditionalism could produce, but it was at the same time empiric and closely related to the national life. Insularity and a comparatively early displacement of feudalism and autocracy had given the British people a distinctive unity of national life as well as political institutions and procedure admirably adapted to the growing demands of emerging democratic states on the continent and in the new colonial areas overseas. Moreover the compromise whereby eighteenth century England had been able to keep a Hanoverian on the throne—despite the fact that half the aristocracy remained loyal to an exiled Stuart—through the device of a cabinet system of government which left to the king only the paraphernalia of royalty was frequently a decisive factor in introducing the British model into European states reacting from the antimonarchical excesses of the 1848 revolutions.

The spread of British parliamentary technique to the dominions of the British Empire has raised the interesting problem as to the extent of its adaptability to the solution of the problems of a federal government, especially where geographic expanse and preoccupation with purely commercial pursuits are complicating factors. In 1867 the framers of the Canadian constitution set up a responsible cabinet with a governor general representing the crown. But the pressure of federal conditions and the influence of the United States, combined with the nationalistic problems created by the French

population in Quebec, have profoundly modified the working of the British parliamentary system. The members of the Canadian House of Commons are in the main inhabitants of their constituencies and concerned only with the advancement of local interests, while the different provinces have special claims to particular cabinet posts. The speaker, occupying a position halfway between the speaker at Washington and the speaker at Westminster, makes political addresses, distributes patronage and has accepted cabinet office. His nomination is moved by the premier supported by the party in office and he serves only during one Parliament. The office is taken alternately by a British and a French Canadian member. The leader of the opposition has since 1906 been paid a salary. Both the government and the opposition use the caucus system. Recently party conventions on the American plan have been replacing the control of the parliamentary caucus. The prime minister in forming his cabinet has to consider not merely the claims of his followers in Parliament but also the claims of those who have given party service in the provinces. Through his control of Senate appointments, provincial governorships, the judiciary and even the civil service, the prime minister or through him the party has the opportunity for machine politics on the American plan. The Senate was made a nominated chamber in which the federal principle of equal representation of the component states of the federation was only partially carried out. It consists of 96 members, the share of each province varying from 24 to 6. In case of deadlock between the two houses the government of the day can secure the creation of 4 or 8 new senators. Finance bills must originate in the House of Commons, which may be rejected but not amended by the Senate. The Senate has not achieved even the limited prestige of the House of Lords, nor is it like the American Senate the guardian of state rights. As it shares in the control of neither "pork" nor patronage and can secure no notice from the press, its function is negligible except in so far as it affords a haven for loyal party workers.

In Australia federal conditions have still further altered the British parliamentary system. At the time of federation in 1900 the smaller states feared the domination of New South Wales. Each state was given 6 representatives in the Senate. For the sake of continuity one half were to retire every three years. In order to secure members of distinction election was to be direct in a state wide constituency. In ordinary legislation the powers of the Senate were made equal to those of the House of Representatives, while in finance a complicated scheme secured the predominance of the House of Representatives in the ordinary services of the government but safeguarded the Senate against tacking. The Senate has not developed as a revising chamber nor as a protector of state rights. The predominance of industrial issues and the rigidity of party organization have divided both the House and the Senate on the same lines. The cabinet system has secured the predominance of the lower House, where the important bills are introduced and questions answered. But the cabinet itself is elected by and responsible to the caucus composed of all the members of the party in both houses.

The quality of the membership of both houses in both the federal dominions has not attained the high level characterizing the British House of Commons. Whereas Great Britain has only to find one House of Commons from 40,000,000 people, each dominion must find several from less than one quarter that number. In Great Britain the powers of the state are concentrated in one sovereign body and not divided according to the vagaries of the judicial interpretation of a written constitution between state and federal authority. The complexity of the machinery of elections is less and the influence of the public spirited amateur in politics more marked in Great Britain than is possible where political machines have to be worked by obscure professionals on a continental scale.

New Zealand has the simplest legislative problems of all the British dominions. Annexed by Great Britain in 1840, it was given an elective legislature in 1852 and responsible government in 1856. With the disappearance of the provincial councils after 1876 the work of the central government was important enough to cause the development of a party system. In 1879 manhood suffrage and in 1893 electoral franchise for women made the constitution of New Zealand one of the most advanced democratically in the world. The House of Representatives consists of 80 members, including 4 members returned by the Maori aborigines, elected for three years. In the Legislative Council, where life appointments had hitherto been made, nomination for seven years was instituted in 1891. The Legislative Council has shown no vigor as a second chamber and exercises no influence on the life of ministries or on the political education

of the electorate. With few problems of foreign policy, no native question and no religious conflicts political life has been comparatively calm and party ties have been loose. The membership of the Parliament is not distinguished. But if politics in New Zealand is not an inspiring profession neither is it a corrupt one.

Unlike New Zealand the Irish Free State has suffered every ill to which political flesh is heir. Born of civil war the constitution drawn up by Irishmen for Irishmen is conditioned by the terms of the treaty with Great Britain. Whatever the nature and force of this agreement, the actual government of Ireland is an experiment in the most advanced form of democratic government. All powers of government and all authority, executive, legislative and judicial, are declared to be derived from the people. In its original form the constitution divided the legislative power between the people and a Parliament made up of the king and two houses. Conditions approaching those of civil war have, however, compelled substantial changes. The power of amendment given provisionally to the Parliament has been used practically to suspend the constitutional limitations on amendments. The constitution provided for the predominance of the lower house, Dail Eireann, over the executive. The Dail elects a president and then the Executive Council selected by him. The Dail may not be dissolved except on the advice of an Executive Council which has not ceased to be supported by a majority. An experiment to introduce in addition to the collectively responsible Executive Council the Swiss system of heads of departments individually responsible to the Dail has broken down. Every member of the Executive Council may address the Senate, but a senator may not be a member of the Executive Council. Money must not be voted or taxes imposed except on the recommendation of the Executive Council. The original scheme attempted to secure a Senate with a constituency distinct from the Dail yet with adequate authority, and with functions appropriate to a second chamber. It was to be elected by the whole country, voting as a single constituency by proportional representation, from a panel of distinguished citizens prepared by both houses. It was to have the power by a three-fifths vote to compel a referendum. But there have been a number of amendments: the seventh abolished the nation wide election, substituting election by both houses voting together; by the eighth the power to compel a referendum has been replaced by an increased suspending power for ordinary bills; the ninth reduced the qualifying age of candidates for election to the Senate from 35 to 30. Senatorial members are now sponsored by different parties. Whatever the future of the Senate, however, it has performed the initial purpose of representing minorities formerly opposed to the policy of independence from England. In the Dail elected by proportional representation for five years the narrow balance of parties and the tension of politics have not yet allowed the functions of the chairman or speaker to be clearly defined.

In South Africa the legislature has had to meet three important special problems. The first was the limitation in the constitution of 1909 on the power of Parliament to alter by ordinary legislation any part of the constitution concerning the rights of natives and the equality of the Dutch and English languages. Their inability to secure the assent of two thirds of both houses sitting together, which was necessary to alter the franchise for natives in the Cape, has led the Dutch to enfranchise all adult European women in order to swamp the native vote. In the second place, membership in the Senate was made in part elective (8 members from each of the 4 states) and in part nominative by the governor general in council (8 members, of which 4 were to have experience of native problems). This system arose from the desire in 1910 to placate provincial feeling and to find some seats for members of the expiring state legislatures. The present system, by which the senators are elected by the provincial assemblies and the members of the House of Assembly for the province, tends to bring them under the influence of the central government. In the third place, while parliamentary procedure is modeled on that of England, the influence of Dutch tradition and the period of crown colony regime from 1902 to 1907 have weakened the control of the legislature over the executive in finance.

K. SMELLIE

FRANCE. Although since 1788 France has never been without some legislative body or bodies claiming to represent a theoretically freely expressed will, the origins of the essential characteristics of the present French parliament may be traced back only to the bicameral legislative system created by the Restoration government (1814–30). Of the previous assemblies those of the revolution—the National Assembly (1789–91), which was formed by the combination of

the three orders of the old Estates General (*q.v.*); the Legislative Assembly (1791–92); and the National Convention (1793–95)—had exercised wide powers, including in the case of the first two constitutional functions as well as legislative and in the case of the third executive and judicial in addition. But no permanent tradition of internal organization or of competence emanated either from them or from the bicameral parliament of the Directorate (1795–99) or from the quadricameral arrangement (1799–1814) which Napoleon created to mask his personal autocratic rule.

The Chamber of Deputies and Chamber of Peers established in 1814 lasted until 1848, serving under both the Restoration and the July Monarchy (1830–48). These assemblies were provided for by the charter, which as originally formulated in 1814 envisaged in an ambiguous way and with many reservations a form of parliamentary government modeled on that of England; thus the Chamber of Deputies corresponded to the House of Commons and the Chamber of Peers to the House of Lords. During the Restoration period it was the essential preoccupation of the lower Chamber to impose upon the king a construction of the charter which would enhance its own powers. Oriented in a regime having at its disposal the highly centralized and powerful administrative machinery which has been characteristic of France since Napoleon, the Chamber aspired not merely to gain control of legislation but to develop checks upon a would be irresponsible executive. Its efforts led to perpetual conflicts between king, ministers and parliament, culminating in the revolution of 1830; but they resulted in the slow emergence of certain principles, which under the July Monarchy became firmly established. Parliament won publicity of debate and the right to initiate legislation. From its constitutional prerogative in the matter of taxation it evolved a certain control over the ministry, which it gradually developed into a strong tradition of ministerial responsibility through the creation of the technique of interpellation (*q.v.*), leading to a debate and a motion of no confidence. This weapon, officially recognized in 1831, became so integral a part of the French cabinet system that its restoration in 1867 after an interim of fifteen years, during which Napoleon III had forbidden its use, was heralded as marking the return to normal parliamentary conditions. Between 1848 and the establishment of the constitution of the Third Republic there intervened the Second Republic (1848–52) with its successive unicameral national and legislative assemblies and the Second Empire (1852–70) with its bicameral parliament. But despite revolution and reaction the tradition of a powerful parliament endowed not only with the legislative function but with the control of the budget and the supervision of policy both in its general lines and in its administrative details survived and became inseparably linked with the government of the Third Republic.

The advances made under the Restoration and the July Monarchy were the work largely of the upper bourgeoisie who sat in the Chamber of Deputies. The Chamber of 1814 was the first French legislative assembly to be directly elected. The franchise was very narrowly restricted on a property basis and was broadened only slightly under the July Monarchy. The office of deputy, being without remuneration, could in any case have been held only by a person with considerable private income. From 1835 on there was a steadily growing demand for an extension of the franchise, in which were fused the idealism of Rousseau inspired politicians and democratic pressure from below. The climax was the Revolution of 1848, which permanently established universal suffrage. Since then at least one house of the legislature has been, as far as universal suffrage could make it so, the expression of popular sovereignty. In this atmosphere the nominated Chamber of Peers—already during the 1820's castigated by Chateaubriand as the "dried up débris of the Old Monarchy, the Revolution and the Empire"—progressively lost caste and influence. Until 1830 its powers with regard to both legislation and the ministry were coequal with those of the lower house and its influence frequently greater, but by 1848 it dwindled into an organ virtually superfluous to the processes of government.

The republican constitution of 1875, a compromise between republicans and royalists, established the Chamber of Deputies as a concession to the former and the Senate as a concession to the latter. The Senate was to be conservative—it was in fact expected by the royalists to be their mainstay in the transition which they hoped to effect to limited monarchy—but its members were nevertheless to be elected, although indirectly. The method of election of senators, as it has existed unchanged since 1884, is through electoral colleges meeting in each department and consisting of the deputies for that unit, the members of the departmental council and dele-

gates from the municipal councils. The deputies are elected directly by universal suffrage, the entire Chamber being completely renewed every four years; while the Senate, whose members are elected for nine years, is partially renewed every three years.

The continuous augmentation of parliamentary powers under the Third Republic has made the Chamber of Deputies the center of the political life of the nation. Its hold over the ministry has been unquestioned since 1877, when MacMahon's unfortunate attempt to dissolve it—the last of a series to which public opinion had never taken kindly—established its immunity to dissolution. Even more than the multiplicity of parties the fact that the cabinet cannot appeal to the electorate but must resign on a hostile vote has caused the proverbial instability of French cabinets. It is in the Chamber of Deputies, which is enshrined in the popular imagination as the meeting place of the recognized representatives of the people, that most bills originate.

But while the role of the Chamber has superficially eclipsed that of the Senate, the latter house continues to play an important part and may in fact be regarded as the chief contribution of the Third Republic to the practise of government. It enjoys fully coordinate powers in all matters save finance—and even there is far from helpless, since its consent is as necessary to the budget as to ordinary legislation and it may at any time suggest unofficially amendments which legally it cannot propose. It can make and unmake cabinets and has provided nearly as many ministers and premiers as the lower house; it cannot be packed or dissolved; its rejection of any measure is final, since no machinery exists either for solving a conflict between the two houses through joint session (which is summoned only for constitutional amendments and for electing a president of the republic) or for making the will of the lower house prevail, as is assured by the British Parliament Act of 1911. Since the Senate is usually averse to evincing open antagonism to the more popularly elected house, downright rejection is rare, although woman's suffrage has been definitely rejected on several occasions. It prefers to attain the same objective by imposing indefinite delays; thus the income tax and social insurance were ultimately carried only after years of adjournment and blocking amendments.

The prestige and authority of the Senate, which put it in close analogy with its American homonym, have been due to a large extent to the fact that it has been able to attract men of weight and experience. Most deputies would willingly exchange their four-year tenure for the solid nine-year tenure of the senator. While the minimum age limit for the deputy is twenty-five and the Chamber has in fact a youthful complexion, the senators must be at least forty years of age. This venerable body, composed of *gens arrivés*, stands out in marked contrast to the Chamber, which under the Third Republic has drawn its membership from a constantly widening range of social classes and includes many of the upper working class. Another important factor is the relative size of the two assemblies: the 314 senators in the quiet Palais du Luxembourg transact their business with infinitely more dignity and solemnity than do the 612 deputies in the feverish atmosphere of the Palais Bourbon.

Nor has the Senate drawn upon itself the opprobrium that might attach to a consistently reactionary assembly. It is on the whole more conservative than the Chamber—a fact which is closely related to the manner of its election: in the senatorial electoral college the small communes, traditional strongholds of conservatism, are still heavily overrepresented, although the original constitutional provision for equal representation of all communes and municipalities regardless of their population was revised in 1884 in the direction of a more equitable distribution of influence. The Senate has been termed *le grand conseil des communes de France*. But precisely because it is elected by representatives of local bodies which have themselves been elected several years previously, it may at any particular time represent a phase of public opinion more radical than the Chamber. In the immediate post-war period, for instance, the Senate, representing pre-war moderately radical opinion, was more to the left than the Chamber elected at the height of the conservative reaction of 1919. If a strong and dignified second chamber is desired, it would be difficult to improve upon the French Senate.

The essential factor conditioning the normal functioning of parliament is its lack of cohesion due to the weakness of party organization. If the term party be taken to mean an organization engaged in systematic propaganda, presenting candidates for parliament and uniting its successful candidates into a parliamentary group in close touch with headquarters, there are in France but three parties: the Communist, the Socialist and the Radical-Socialist, of which the

last is distinctly less homogeneous than the other two. The numerous deputies and senators outside these parties are divided into groups varying in number and name not only from one parliament to another but from one session to another; few of them, especially those of the center, even vote together with any regularity. An atomistic tendency has been characteristic of French legislatures from the beginning: since the revolution there has always been evident a strong opposition to any rule or organization which might conceivably fetter the independence of the individual member—the sacrosanct choice of popular sovereignty. Once elected, the deputy is secure in his tenure for four years and he cannot be brought into line with the threat of a general election. On the contrary, ministerial changes always hold out the prospect of a possible portfolio. In the absence of party ties the parliamentarian becomes inevitably the representative not of a definite national policy but strictly of his constituents. He is responsible solely to a local committee for his selection as candidate and for his election; he frequently owes his seat only to a coalition of intrigues against a member who has offended some canon or bigwig of local politics. This situation entails obvious evils, which are the greater because it affects both chambers alike: measures are considered for their effect upon local affairs; many a potential statesman is precluded from entering politics by his lack of strong local connections; and parish pump politics tend to predominate.

As a result of the second ballot system most deputies are returned by a clear majority; this system, while not as accurate as proportional representation, tends to a greater stability of political forces than the British single ballot with plurality election. The "swing of the pendulum" has been less marked in France than in many countries and the World War in particular has brought no marked alteration in party alignments: France has for many years been divided into two approximately equal masses separated by a floating element that determines every four years which of the opposing policies shall prevail in the new parliament. This oscillating opinion, however, is liable to change before the four-year period is over; its representatives in parliament change too, with the result that parliamentary majorities which at the beginning of a legislature tend to be definitely right or left drift centerwards so that by the time it disappears every parliament tends to become a moderate body. The whole electorate, however, has been moving slowly but steadily to the left for the last quarter of a century.

As no group or party has ever had a clear majority in either chamber, every cabinet is a coalition cleverly chosen so as to secure the support of the maximum number of groups in each house. At any given time there are several possible combinations or coalitions, each capable of securing a majority. The defection of a group may at any moment cause a ministerial crisis and lead to the formation of a new cabinet, often comprising a considerable proportion of the previous one, often even under the same premier. It follows from this that the vote of the individual member has much greater weight in the determination of policy than under the two or three-party system and that the leadership of a small group may give a second rate politician a decisive influence which the heads of even the largest parties must take into account. No French statesman can rely on the solid support of a party capable of obtaining an independent majority; he is rarely the only possible premier, and his success will depend largely on his handling of the groups nearest to his own to right or left, without whose support his cabinet could not survive even for a day.

By reaction against the centrifugal forces of French individualism, which remain unchecked by party discipline, there has been perfected under the Third Republic an elaborate machinery of bureaus and grand commissions. The former are haphazard divisions of members drawn by ballot and forming small groups out of which are selected a number of routine permanent committees of no political significance and the special committees to which all bills are referred for preliminary discussion. But it is the grand commissions, not the committees or the bureaus, which are the strongest organs in each house. Elected annually by the formal groups in strict proportion to their numerical strength, they form a sort of replica of the whole chamber and are permanent bodies, each charged with oversight of some definite sphere of government or administration.

Parliamentary commissions have had a long history in France; since the revolution the French have tended to delegate to them functions which the British Parliament has exercised as a committee of the whole house. It was through its various commissions—the Committee of Public Safety, the Revolutionary Tribunal and various other committees of inquiry and control—that the National Convention was able

for three years to dominate not only legislation but the administrative and judicial spheres. The precedent established by the National Convention, however, through its association with the Terror and with oligarchical authoritarianism caused later parliaments to seek to impose checks upon the power of the commissions. In this effort were joined the antiliberal groups which sought to diminish the power of the legislature and those who wished to keep the influence of the whole parliament from passing into the hands of the few. Hence the system which predominated from the Restoration period until late in the nineteenth century was that of special committees appointed either ad hoc for the consideration of each bill or for a brief period and limited to the legislative function. But the very multiplicity of bills, arising from the existence of unlimited private initiative, rendered the inefficiency of such a system increasingly intolerable; and during the closing years of the nineteenth century there was actually emerging an unofficial system of permanent commissions performing the functions for which the bureaus and the special committees were inadequate. Finally in 1902 in the atmosphere created by the drift of opinion in favor of an omnipotent legislature the Chamber of Deputies legalized the system of grand commissions, and its example was followed by the Senate in 1921. So important have the commissions become that it may safely be said that most parliamentary business is really transacted there. Each bill whether it originates from a private member or from the ministry, for the French refuse to discriminate between private and ministerial measures, is given its final shape and sometimes is so modified as to be completely transformed by the reporter of the commission. In consultation with the president of the assembly the reporter fixes the time for debate, which is directed by him rather than by the minister.

Since the French president has no veto power and can only formally promulgate bills which have been sent to him by parliament, the creation of laws really depends upon the agreement of the appropriate commission in each house, always provided that the latter experience no setback in engineering them through the fickle assemblies. The commissions can of course kill legislation by indefinitely postponing its consideration. The effective sphere of the commissions is administrative and political as well as legislative; and the most important of them, such as those for foreign affairs, the army and the budget, are likely to direct policy quite as much as the responsible minister, who dares not jeopardize his already precarious position with regard to parliament by ignoring them. The chairmanship of such commissions is much sought: the chairman of the Senate Commission for Foreign Affairs is always an ex-minister of that department, often an ex-premier. So dominant is the part commissions play that there are widely divergent views as to their real utility in a parliamentary system. In the main, however, most critics would agree that they enable much important business to be transacted in a quieter and less partisan atmosphere than that of the whole house and that certain delicate matters of foreign policy can be treated therein with a secrecy of which the Chamber or Senate would be incapable. The principle of proportional representation, on which they are elected, by safeguarding the interests of minorities tends to diminish possible abuses of their powers.

The chaotic aspect of the French legislature, due to its inveterate aversion to restricting the freedom of the private member, has been gradually corrected by the imposition of certain rules and the development of a fairly efficient internal organization. The president of each assembly, who is assisted in the performance of his duties by a corps of vice presidents and secretaries, is now in possession of a system of sanctions, including an ultimate penalty of imprisonment, to punish refractory or obstreperous members. Debate, upon which there were no real restrictions until the Third Republic, is now so regulated that the time allotted to each member is determined either by his position or by the formal importance of his message. The president of each chamber, who is elected by the entire membership and who in view of the motley composition of the French legislature is likely to be non-partisan, has become a figure of considerable significance as the creator of the parliamentary time table and the director of debates. Through the *droit du chapeau* he can at any time by the simple ceremony of putting on his hat put an abrupt end to a futile discussion, a privilege, however, which he shares with the right of *clôture* vested in the whole house. His general position is recognized in the present established tradition that the president of the republic usually summons the president of each chamber on the occasion of a ministerial crisis. But on the whole there is a widespread sentiment in France among those who deplore the waste of time in the legislature and its frequent "scan-

dalous sittings" that his disciplinary powers should be increased.

No law compels ministers to be members of parliament, and the right of every minister to speak in both houses even if he be a member of neither has made it possible to bring non-parliamentary experts into the cabinet. This happens infrequently, however; generally the French cabinet like the British is an executive committee of parliament. In its relation to parliament it is both very weak and very strong. It has little control over the parliamentary time table; it must make reasonable room for private members' bills; its policy is under the constant scrutiny and even correction of the permanent commissions; it is exposed at any time to dangerous interpellations. On the other hand, its control of a vast amount of patronage, its strict hold on the entire administrative machinery and its power of establishing subordinate legislation by ministerial decree give the cabinet powers which would be quasi-autocratic were it not for the precariousness of its tenure.

There is no rigid division of powers in the French government. The parliament like the British is not so much a lawmaking body as an organ of government, sharing with other organs the general control of the whole political machine. In this connection the Senate's judicial function as the supreme court for the trial of offenses against the state on the motion of the lower Chamber is significant, although this power has been used almost exclusively for political rather than strictly judicial purposes. In a general way the competence of parliament is virtually unlimited; and as the so-called fundamentals of the constitution are very few, no court of justice would seriously challenge the validity of any formally promulgated law.

There are two outstanding characteristics of French legislation. First, there is a comparative dearth of constructive legislation, especially in the social and economic spheres, a phenomenon which can be explained partly by the fact that legislation is not the primary function of parliament, cabinets being judged more by their general policy and capacity to govern than by their legislative achievements; and partly by the lack of interest in economics shown by a people deeply distrustful of any attempt at interference with the free play of economic interests. Second, there is the tendency arising from an exaggerated national sentimentalism to flood the most concrete problems with a torrent of abstract considerations which serve only to confuse the issues. In the main French legislation is cautious and moderate; really sweeping measures or drastic changes are rare.

ROGER SOLTAU

GERMANY AND AUSTRIA. *Germany*. During the first half of the nineteenth century, under the influence of French revolutionary ideology, there arose in the German territorial states, which hitherto had been absolute monarchies, political movements for the establishment of a constitutional state operating through legislative assemblies. The bourgeoisie freed from the domination of the privileged estates and no longer satisfied with mere civil liberties and rights aspired to a share in political power. Basing itself on Montesquieu's theory of the separation of powers rather than on Rousseau's radical democratic theory the constitutional movement in Germany set itself the comparatively modest goal of restricting the unlimited power of the crown by means of a parliamentary regime. Participation of the people's representatives in a national legislative assembly and separation of constitutional powers became the dominant concepts of German constitutional theory.

The first successes were gained in the south German states which were more exposed to French influence and in a number of small states in central Germany. In 1816 Goethe's friend Grand Duke Karl August of Saxe-Weimar granted a constitution; Baden and Bavaria followed in 1818, Württemberg in 1819 and Hesse-Darmstadt in 1820. In northern Germany, however, particularly in Prussia, the feudal tradition was more persistent and offered a more solid front against the liberal offensive. It was not until the March Revolution of 1848 in Berlin and the convocation of the National Assembly in May that the constitutional movement may be said to have made any appreciable headway in Prussia. Even then the representative principle was given short shrift and after the dissolution of the Frankfort National Assembly the Prussian constitution was proclaimed by the king alone. All the state parliaments of this period were of the two-chamber type.

The persistent attempts, chiefly on the part of the advocates of German unification, to inaugurate a centralized parliamentary regime with a single representative assembly speaking in the name of a united nation were repeatedly frustrated during the first half of the nineteenth century. The work of the National Assembly in 1848 despite its establishment of a provisional

central authority and its drafting of a parliamentary constitution proved abortive, in large part because of the refusal of the king of Prussia to accept the imperial crown from its hands. Prussia's defeat of Austria in 1866 may be singled out as the turning point in the struggle for a parliamentary regime on a national scale. The acknowledgment by Austria of the dissolution of the German Confederation brought to an end the ineffective federal diet (Bundestag) and left the way open for Prussia to assume the initiative in evolving a genuinely national representative system and constitution. After concluding various alliances with the north German states Prussia established in 1867 a constitutional union, the North German Confederation, with a central Reichstag composed of popular representatives elected by manhood suffrage and a second body, the Bundesrat (*q.v.*), consisting of the instructed representatives of the various state governments chosen without popular election. The responsibility for legislation was to be shared by the two bodies collaborating on virtually equal terms.

The incorporation of the south German states following the Franco-Prussian War completed the work of unification and made possible a uniform representative system with legislative assemblies, national and state, modeled on the original North German Confederation pattern. This form of German legislative assembly remained practically unchanged in the several states and in the Reich down to the revolution of November, 1918. Although the power of the Reichstag became gradually strengthened and the dominance of the privileged estates in Prussia began to be undermined, the parliamentary system, both in the Reich and in the several states, was unable to break through the older restrictions with which from the outset it had been trammeled. In neither the national nor the state government did the popular legislative body prove itself capable of assuming a decisive role in the administrative or executive spheres.

The events of the November revolution raised a serious doubt as to the future of the parliamentary system. Revolutionary forces were striving for the establishment of the Soviet system and the proletarian dictatorship, and in certain states—notably Bavaria—the movement gained a momentary success. But eventually the democratic parliamentary system won out. The German National Assembly, elected by universal suffrage, met in Weimar on February 6, 1919, and was greeted by Ebert as the supreme sovereign body of Germany. A second legislative body, the Committee of States (*Staatenausschuss*), although it participated in legislation, was excluded from an active role in the creation of the new German constitution, a role which was reserved for the National Assembly alone. After thorough discussion in the Constitutional Committee the constitution was adopted in the National Assembly and went into force on August 14, 1919.

The new German constitution endeavored not only formally to incorporate the change from monarchy to republic but also to give substance to the concept of democracy. Whereas the preamble to Bismarck's constitution had conceived of the Reich as an enduring confederation of German dynasties, the Weimar constitution confronted with the *fait accompli* of dynastic overthrow states in its preamble that the constitution is the work of the German people. The constitutional principle of the democratic republic as laid down in article 1 conferred unprecedented powers upon the people's representatives; while the provisions for popular initiative and referendum, woman suffrage and proportional representation went still further in the direction of pure democracy. But despite these significant gains the really decisive political achievement of the November revolution was article 54, which officially ushered in a genuine parliamentary regime, with the participation of the Reichstag in administrative and executive functions. "The Chancellor and the ministers of the Reich require the confidence of the Reichstag for holding and exercising office. Anyone of them must resign if the Reichstag withdraws its confidence in him by expressly so voting." Thus the president, although he has the right of appointing and dismissing the government, can exercise this right —at least under normal political conditions— only with the concurrence of the Reichstag majority. The Reichstag cannot be convened or adjourned except by its own consent, while the regulation of its activities is entirely in the hands of its duly elected president; it controls the election of the president of the Reichstag and his assistants and of the various committees, determines parliamentary agenda and procedure and enjoys far reaching powers in the appointment of investigating committees, which have the right of access to the records of courts and administrative agencies.

The Reichstag is the real lawmaking body, although the people may in certain cases act directly as the supreme legislature. Bills may be

introduced either by the government or by private members; in the latter case, however, they must bear the signatures of at least 15 deputies. Government bills must have the approval of the Reichsrat; that body as well as the Reichswirtschaftsrat may introduce its own bills through the cabinet. When the cabinet, the Reichsrat and the Reichswirtschaftsrat disagree over a proposal the divergent viewpoints must be made known to the Reichstag.

The legislative powers of the people are exercised through popular initiative. Proposals so initiated must be submitted to the Reichstag by the government, which must present its own views on the subject. If the measure is not accepted as submitted, a popular referendum is required. Under normal circumstances the budget bill must be passed by the Reichstag, and favorable action by it is also required for the appropriation of credits and the guaranteeing of securities by the Reich. Declarations of war and the conclusion of peace likewise call for legislation by the Reichstag, which must also ratify treaties that require legislation to make them effective. Article 48 of the constitution, however, gives the president wide powers of legislation by decree in time of emergency; the extent of these powers became apparent in 1932, when the budget was balanced and credits appropriated by such decrees without action by the Reichstag.

An important power of the Reichstag is that which permits it by a two-thirds vote to propose to the people the deposition of the president of the Reich. Rejection of such a motion by the people is considered tantamount to reelection of the president and results in the dissolution of the Reichstag. The Reichstag may also indict the president, the chancellor or the ministers before the Reichsstaatgerichtshof for violation of the constitution or the laws. Finally, it may abrogate measures decreed by the president under article 48 of the constitution.

Members of the Reichstag are legally "representatives of the entire people," not of particular constituencies; "they are subject only to their consciences and are not bound by instruction." In practise, however, the representative gives allegiance to his party and to his group in parliament. If he fails to vote on important questions with members of his group he may be expelled from his party, but this does not involve the loss of his seat. There is no legal way by which he can be forced to resign his mandate.

Although the constitution of the Reich does not mention parties, the standing orders of the Reichstag as of all German legislature gives them explicit recognition. In the Reichstag a parliamentary group is a union of at least 15 members. The membership of the Reichstag organs, such as the *Ältestenrat* (Council of Elders), the *Vorstand* (Presidium) and the committees, is selected from the groups in proportion to their numerical strength; the individual deputy is placed in a distinctly secondary place with no possibility of independent action. Deputies possess all the usual parliamentary immunities.

The most important features of the Reichstag are the *Vorstand* and the committees. The *Vorstand* is composed of the president, his representatives and the secretaries, who are elected by the Reichstag for one electoral period. The president has considerable power: he directs the business and deliberations of the Reichstag, maintains order, controls the police in the Reichstag building and has a consultative voice in all committees. He is assisted by the *Ältestenrat*, which is composed of the president, his representatives and 21 members who are designated by the party groups. The primary task of this body is to promote mutual understanding between the groups and when agreement proves impossible to assist the president in his decisions.

The constitution provides for two standing committees, the Committee for Protection of the Rights of Parliament (*Ausschuss für die Wahrung der Rechte der Volkvertretung*), called also the Committee of Control, and the Committee for Foreign Affairs (*Ausschuss für auswärtige Angelegenheiten*), both of which function also between sessions of the Reichstag. In addition the Reichstag appoints a number of other standing committees, including a Committee of Procedure (*Geschäftsordnungausschuss*) and a Committee of the Budget (*Ausschuss für den Reichshaushalt*). In addition to the standing committees the Reichstag forms special committees, the most important of which are the investigating committees, which must be appointed on the demand of one fifth of the Reichstag. Judicial and administrative officials must on demand submit evidence and records to these committees. Inquisitorial power is possessed also by the two constitutional standing committees.

Most of the real activity of the Reichstag takes place in the committees, plenary sessions being employed primarily to sanction committee decisions and formulate general policies. The deliberations of the full Reichstag proceed according to an order of the day which is established in

principle by the president. Propositions and motions can be discussed only when they have been printed and distributed to the members. Certain bills, including motions concerning the budget and ratification of treaties, must go through three sessions, as may also proposals emanating from the cabinet or the Reichsrat, whether or not they require legislative action; all other measures are treated in one session. Thirty members of the Reichstag may submit an interpellation, while 15 may raise questions of lesser importance; the government is not bound to answer these demands for information. Interpellations are answered orally, if at all, in sittings designated by the government. On the demand of 50 members a discussion may follow. Questions of lesser importance are usually answered by letter without discussion. Any citizen may petition the Reichstag; such petitions are first sent to the appropriate committee and then acted upon by the entire Reichstag.

Only members of the Reichstag, members of the federal government and its commissioners and representatives of the states may speak in the Reichstag; speeches are ordinarily limited to one hour. The president determines the order of speakers. He is supposed to take into account both the strength of the different groups and the requirements of efficient deliberation. Normally the decisions of the Reichstag are made by a simple majority except for alterations in the constitution, which require a two-thirds vote. Two thirds of the deputies must be present when the constitution is to be altered; otherwise more than one half the members constitute a quorum.

The powers of the legislative assembly are in some respects explicitly curbed by the Weimar constitution. Although in the exercise of his governmental functions the president is required to have the countersignature of his parliamentary ministers, he is empowered in the absence of a reliable government majority in the Reichstag or in case of serious conflict between the government and the Reichstag to appoint an emergency cabinet and to dissolve the Reichstag; so that in the event of close accord between the president and the cabinet the way is open to a virtually dictatorial suppression of the representative bodies. Another counterweight against the popular legislative assembly is the power of the non-responsible bureaucracy, which plays an increasingly influential role in government and administration. The Reichswirtschaftsrat, embodying the principle of functional representation and intended as a further counterbalance to the purely political representation provided by the Reichstag, has on the whole fallen short of expectations.

The principle of popular representation is offset to a greater degree by the Federal Council, or Reichsrat, which like the earlier Bundesrat is composed of instructed representatives appointed by the governments of the several *Länder* composing the German federation, but which unlike its predecessor is limited in its legislative role to the power of veto on the decisions of the Reichstag. In the present upper chamber the principle of federalism is more genuinely observed, thanks to the care of the constitution makers at Weimar to bring to an end the long standing hegemony of Prussia in the Bundesrat. The votes of members of the Reichsrat follow the policies of their state governments, whose instructions they must carry out. As these governments are formed by constantly shifting coalitions, the Reichsrat is characterized by a lack of stability, which reflects the turmoil of parliamentary struggles within the states. The homogeneous character of the former Bundesrat was preserved by the dominance of Prussia. This influence has been removed from the Reichsrat and the instability increased by the fact that the votes of Prussian provinces may differ from the votes of the Prussian central government.

When a bill passed by the Reichstag is rejected by the Reichsrat it goes back to the lower house for a second vote. If the two houses cannot finally agree the president of the Reich may submit the bill to a popular referendum; budget and financial laws are not subject to referendum. On most of the few occasions on which the Reichsrat has exercised its power of rejection it has been sustained. Submission to a referendum has not yet occurred. The Reichsrat has no power over the federal executive, which is required by the constitution merely to "keep it informed of the management of the federal affairs." The Reichsrat has nevertheless acquired a position of considerable influence, largely because of its usefulness in adjusting the interests of the Reich with those of the individual states. The Reichsrat functions through eleven committees, on none of which may any state have more than one vote; the larger states are represented on all the committees.

There is no constitutional provision in Germany that members of the cabinet must belong to the Reichstag, and there is an increasing tend-

ency to put non-members in the government, as, for example, in the case of the "presidential" von Papen government in 1932. The bureaucracy is likely to be heavily represented in the government, both because of its traditional importance in Germany and because of the growing difficulty of forming effective coalition governments.

Individual ministers and the cabinet as a whole are required to resign only in case of an explicit vote of censure by the Reichstag; resignation cannot be forced merely by rejection of a government bill. Direct votes of censure are rare in Germany, although the opposition frequently threatens to employ this weapon. The fall of a government is usually brought about only by some major political event, such as an election.

The successful functioning of a legislative assembly, with its premium on compromise, is contingent upon the general recognition of certain basic premises determining the limits within which the struggle for parliamentary domination must confine itself. When powerful groups challenge these basic premises, the very system itself is endangered. This danger has been especially grave in Germany. Unversed in the technique of a two-party system, the leaders of the numerous small parties in Germany witnessed a still further complication of their problem in the form of proportional representation. Although the coalition engineered at Weimar by zealous parliamentarians speaking in the name of Socialists, Catholic Centrists and the bourgeois democratic parties was expanded to include the other parliamentarian party groups of the right, the spectacular rise of the Communists and the National Socialists has seriously threatened the waning strength of the liberal parliamentary coalition, paralyzing even its legislative functions, which have had to be taken over by the executive power in the form of emergency decrees.

Article 17 of the German constitution obliges the *Länder* to introduce a republican constitution, a democratically elected legislative assembly (*Landtag*) and a government responsible to the assembly. The composition, functions, organization and procedure of the state legislatures are essentially the same as in the Reich, although in a number of cases the *Landtag* is empowered to elect the president and in others the entire government. In many *Länder* the intensification of party differences has made it impossible for the assembly to form a government, so that the old government continues to function although it no longer corresponds to the will of the people as expressed by the changed make up of the legislative assembly. In general it may be said that the parliamentary system has grown more and more paralyzed, especially in the smaller German states.

Although the constitution does not differentiate between the several German states, the extraordinary differences in size of the various states has an unfortunate effect. The overwhelming predominance of Prussia has created a serious problem as to its political relationship to the Reich. The fact that two great legislative assemblies, the Reichstag and the Prussian *Landtag*, two governments—the Reich government and that of Prussia—and a powerful Reich and Prussian ministerial bureaucracy are all concentrated in Berlin has seriously hampered the political development of Germany when, as is often the case, the political composition of the Reich differs from that of Prussia.

Austria. When the proclamation of the democratic republic of Deutschoesterreich made in October, 1918, by the German bloc of the former Austrian Chamber of Deputies (Abgeordnetenhaus) acting as a provisional National Assembly was countermanded by the peace treaties of Versailles and Saint-Germain, Austria set up a separate republican regime of its own based on a constitution which gave full recognition to parliamentary and federalistic principles. The two assemblies—the Nationalrat, elected by universal suffrage, and the Bundesrat, elected by the provincial diets—shared the responsibilities of legislation and acting together (as a Bundesversammlung) selected the president. As in Germany, however, the selection as well as the overthrow of the government was the prerogative of the popularly elected branch. As the result of a growing demand in many quarters for a more adequate system of checks and balances a revision of the constitution in December, 1929, transferred the election of the president to the people and at the same time extended his prerogatives to include the appointment of the members of the government and the dissolution, with the concurrence of the government, of the popular assembly; the popular election of the president was abandoned in 1931. The parliamentary principle has persisted without modification in the legislative assemblies of the various *Länder* which comprise the Austrian federation. The procedure in the Austrian legislative assemblies does not differ in any important respect from that of the Reichstag.

OTTO KOELLREUTTER

SWITZERLAND is a federal state whose constituent cantons enjoy a very large measure of legislative autonomy. The Federal Assembly is composed of two houses: the National Council (Nationalrat, Conseil National) and the Council of States (Ständerat, Conseil des États). Bicameralism, which was introduced into the federal constitution in 1848, represented an adaptation of a foreign institution in order to reconcile the two conflicting tendencies of local independence and national unity. Since the thirteenth century the Swiss cantons had considered themselves as sovereign states bound together by successive treaties only for purposes of external defense and internal peace. This long tradition of cantonal independence has been interrupted only for a few years under the impact of the French Revolution. In 1848 after a brief civil war, in which a minority of Catholic cantons, claiming complete autonomy and attempting to set up a confederacy of their own, had been crushed by the Protestant majority, this tradition was still strong not only in the defeated cantons but also among the less democratic elements in most Protestant cantons. The forces of the past were in favor of maintaining a loose confederacy, in which the cantons should remain their own masters and the federal authority should be represented by a single body equally representative of the constituent states. These conservative tendencies were those of a religious and social minority which could justly claim to be the true descendants of the founders of the republic and the more faithful exponents of its traditions. The majority of the people, however, had become impatient of political privilege and internal disunion. They sought to establish a new republic freer and stronger than the old and based on democratic equality and national unity—a commonwealth in which the preponderant sovereignty would be shifted from the cantons to the federal state and from the privileged few to the whole people. Both as a theoretical corollary of their democratic faith and as a practical protection against reactionary minorities they therefore favored the establishment of a single central legislature directly representative of the people. The bicameral system was clearly a compromise between these two tendencies. In one house the cantons were each to be represented by two deputies; in the other the people were to be directly represented on the basis of one deputy for 20,000 inhabitants.

This solution was a conscious imitation of the American arrangement conceived under similar circumstances more than half a century before. The American example had been discussed in countless pamphlets and speeches in Switzerland from the beginning of the nineteenth century and deliberately championed by some of the leading Swiss statesmen in 1848, but it was not copied in all its details.

The constitution of 1848 provided that every canton was to have one representative in the National Council for each 20,000 inhabitants and at least one. The elections, on the basis of manhood suffrage, were to take place every third year by absolute majority in electoral districts defined by federal statute. This system was retained in the revised constitution of 1874, but after two unsuccessful attempts in 1900 and 1910 proportional representation was finally introduced by popular referendum in 1918, each canton forming one electoral district. In 1931 the term was raised to four years and the electoral quota to 22,000 inhabitants. The number of members, which had been 111 in 1848 and had risen, because of the increase in population, to 198 in 1930, was thus reduced to 190 in 1931. All proposals to substitute the population of Swiss nationality for the total population as a basis of representation, which have been put forward from time to time by deputies of rural cantons in an attempt to increase their relative importance, have been defeated.

The method of electing the members of the Council of States was not fixed in the constitution and varies from canton to canton. At first generally elected by the cantonal legislatures, they are now chosen by secret popular vote in seventeen cantons, by the *Landsgemeinde* in four and by the cantonal legislatures only in four. Their term of office varies from one year in five cantons to four years in one. In eighteen cantons the term is three years.

Despite the growth of the influence of the executive the development of the federal civil service and the extension of the jurisdiction of the Federal Tribunal the revised constitution of 1874 like that of 1848 declared that the Federal Assembly possessed "the supreme authority of the Confederation," and expressly charged the Assembly with the duty of "dealing with all matters within the competence of the Confederation which have not been entrusted to another federal authority." In practise the Federal Assembly is much more than a mere lawmaking body. Besides its legislative functions, which it shares with the people, it has executive and judicial duties. As an executive organ it is respon-

sible for the army, whose commanding general it elects in case of war; for the granting of subsidies and concessions; and for the supervision of the Federal Council, or federal government, whose members it elects every four years and whose administration it controls on the basis of an annual report submitted to it by the council. As a tribunal it settles disputes of public law and is the final judge of the constitutionality of its own legislation.

The two houses always sit simultaneously and as a rule in public. The constitution provides for one ordinary session annually and for extraordinary sessions at the request of the Federal Council, of a quarter of the members of the National Council or of five cantons. Since the World War the Federal Assembly has met four or five times yearly for sessions of an average duration of three to four weeks each. Joint sessions of the two houses are exceptional. They take place under the chairmanship of the president of the National Council to elect the government, the federal tribunals, the chancellor of the confederation and the commanding general and to consider certain judicial matters. Except for the fact that the National Council, being more numerous, dominates the Federal Assembly when in joint session the constitution provides for the absolute equality of the two houses. Neither enjoys any special rights or privileges. All legislation, including the annual budget, may be introduced first in either house and cannot become operative until agreed to by both. Although there is no constitutional way out of a deadlock, in practise no deadlock has ever proved very troublesome.

The legislative initiative belongs to the government, to each member of both houses and to any canton by correspondence. The rules of the Federal Assembly restrict the exercise of this right of its members to the presentation of motions inviting the government to formulate bills for legislative approval. Members of the government, who cannot belong to either house, may and constantly do participate in the debates on bills. In each chamber half the members constitute a quorum. All votes are taken by majority of the deputies present, voting by proxy being unknown.

In spite of its exceptionally strong constitutional position the Federal Assembly is relatively weak when compared to most foreign parliaments. This is due mainly to the permanence of tenure and consequent strength of the Federal Council. As the members of the government are in practise always reelected and as members of the Assembly are not expected to devote themselves exclusively to their legislative duties, the former are in their dealings with the latter in the position of professional experts addressing amateurs. The permanence of the government has led to a corresponding lack both of executive ambition and of executive experience on the part of the Federal Assembly. As the Assembly usually includes no former members and but very few future members of the federal government, its function in fact often resembles that of an advisory rather than of a sovereign body. Government measures are seldom seriously amended and still more seldom rejected by the legislature, which in this respect has always shown itself far more docile politically than the people at the polls. The success of the referendum in Switzerland is both a cause and a consequence of this extreme parliamentary docility.

The same is on the whole although perhaps to a less extent true of the cantonal legislatures, all of which are unicameral. They vary in size from 51 in Nidwalden, the smallest canton, to 230 in Berne, the largest. Of the 25 cantonal legislatures, 17 are elected by proportional representation and 8 by majority vote. The basis of representation ranges from 250 in two small cantons to 3000 in Berne. The term of cantonal legislatures ranges from one year to six years, the most common being four years. The sessions of most cantonal legislatures are short and correspondingly numerous, so that their members, who are drawn from all walks of life and are never professional politicians, may attend without neglecting their own affairs.

W. E. RAPPARD

THE NETHERLANDS. The States General of the Kingdom of the Netherlands is descended historically from the States General of the Republic of the United Provinces of the Netherlands (1581–1795), from which it differs, however, in several important respects. The earlier assembly in turn was similar in structure and functioning to the provincial states, from which it derived its authority.

The provincial states were the representatives of the municipalities, the nobility and the clergy, summoned by the sovereign of the county or duchy to pass on important questions, such as the succession to the throne and the voting of taxes, especially for wars. The organization of the states varied in the different provinces and in the same province from time to time. After the

Reformation the influence of the clergy declined. The nobility was most influential in Gelderland and Utrecht and least so in Holland, which was by the sixteenth century the richest and most important province. In the northern provinces the rural districts possessed significant representation. In general each town had only one vote but might send as many deputies as it chose; the deputation merely expressed the will of the town and in important cases referred the matter back to the municipalities (*vroedschappen*) for their decisions. Each town was bound only by its own vote. Essentially then the provincial states represented a loose confederation of sovereign municipalities.

As several provinces came under the control of a single person, states were sometimes summoned for two or more provinces. The most important of these joint assemblies was that of Holland and Zeeland. In 1465 Philip the Good, having acquired almost all the Netherlands provinces, summoned representatives of all the states of the Low Countries to a States General to recognize his son as his successor and to vote supplies for a war with France. Until 1477 the States General was an irregular organization, which came into existence only at the call of the sovereign. In that year the Great Privilege, among other concessions, gave to the States General the right to convene on its own motion and to pass upon declarations of war and the marriage of the sovereign. The provincial states by separate grants also acquired the right to meet at their own wish. But the provisions of the Great Privilege were frequently violated by Maximilian and definitely abrogated by Philip the Fair in 1494. The States General was summoned increasingly frequently but only at the will of the sovereign and to consider his requests for supplies. Control of the purse was utilized by the States General, however, as a means of obtaining redress of grievances from the government, which was largely in the hands of foreigners. A proposal to institute in the Netherlands a form of permanent sales tax, similar to the alcabala (*q.v.*) in Castile, which would have made the sovereign independent of the States General, was rejected by that body in 1569. After the abjuration of Philip II in 1581 the States General functioned as the principal central organ of government for the highly decentralized republic.

The States General under the republic functioned like the early provincial states, except that its sessions were permanent. Each province had only one vote, by which alone it could be bound in important matters; the deputations, chosen by the provincial states, were sworn to act in the interest of their mandators; they had to follow instructions and refer all important disputable matters back to the provincial states. Since the latter were ultimately controlled by the municipalities, under the republic it was in the *vroedschappen* that real political control ultimately resided. The States General, dominated by Holland, which bore the greatest tax burden, appointed the officials of the republic and controlled foreign affairs, the army and navy and finances. The executive body of the republic was the Council of State (Staatsraad), the members of which were chosen by the provincial states but took an oath to act in the general interest; the council prepared the military budget and its allocation among the provinces, but the consent of each province was required for its particular levy.

After the defeat of Napoleon had restored to the Netherlands the independence taken from it in 1795, a new States General was set up in 1814. It was a bicameral legislature, with a First Chamber nominated by the king and a Second Chamber by the provincial states. But, unlike the old States General, the members of the new were forbidden to consult with their mandators and were sworn to follow their own conscience and to vote in the general interest. This change marked the definite shift of legislative power to the States General. In 1848 direct election of the members of the Second Chamber and of the provincial states and election of the members of the First Chamber by the provincial states were introduced. In 1917 universal suffrage for men and women was introduced for the election of members of the municipal councils, the provincial states and the Second Chamber of the States General. The First Chamber can neither initiate nor amend legislation but must accept or reject it as presented. A proposal to abolish the First Chamber failed in 1922, but the matter is still occasionally agitated. The Staatsraad continues as an advisory body to the government on all legislative matters and acts as an intermediary between the sovereign and the Second Chamber.

The States General has the right of inquiry, and its commissions if authorized by the assembly can compel testimony and the production of papers. Individual members possess the right of interpellation and the usual parliamentary privileges and immunities. Members of the cabinet may sit in either Chamber and answer questions but cannot vote unless members of the particular Chamber. Before the World War both cham-

bers followed the French system of committees: each Chamber divided into five sections by lot; for each particular measure each section chose one member; he reported to his section, which then debated the measure. This system is still used in the First Chamber, but since the World War the Second Chamber has tended increasingly to use standing committees, chosen not from the sections but by the president of the Chamber or by the plenum; these committees report directly to the Chamber and disregard the sections entirely.

Ministerial responsibility to parliament was conceded in the constitution of 1848 and until the World War governments were practically responsible to the Second Chamber; the veto power possessed by the king was rarely employed. During the war and post-war periods the functioning of ministries on the basis of a majority support in parliament proved almost impossible and the country was ruled largely by extraparliamentary ministries which revived the monarchical veto.

A. C. Josephus Jitta

Scandinavian States and Finland. *Sweden.* Popular representation in Sweden dates from 1435, when for the first time representatives of the various social classes met in a national assembly, or Riksdag (day of the realm), to consult with the regent on affairs of state. Such meetings were held sporadically thereafter, being summoned usually only in emergencies when the king needed popular support against the nobles or some foreign power. Not until the seventeenth century under Gustavus Adolphus was the composition of the assembly fairly definitely fixed; it consisted then of representatives of the four estates: the nobility, the clergy, the burghers and the peasants. Its procedure was defined also during this period and its authority increased. During the so-called age of freedom (1718–72) the Riksdag held a dominant position in the government and a parliamentary system was applied, although it was controlled more by the central bureaucracy than by the people. The parliamentary system survived even the revolution of 1772, by which Gustavus III ended the supremacy of the Riksdag.

Even after the great constitutional reform of 1809–10, which brought about a balanced rule between king and people, the organization by estates was maintained. It was finally abandoned in 1866 with the institution of a two-chamber system, which has gradually been made more democratic, the last time by the constitutional changes of 1918–21.

The 150 members of the First Chamber are elected indirectly for eight years, in such a way as to give the Chamber new members each year, by provincial assemblies or in the cities by electoral bodies chosen by all men and women over twenty-seven years of age. The 230 members of the Second Chamber are elected directly for four years by all men and women over twenty-three years of age. Proportional representation applies in the elections to both chambers.

In power and in actual influence the two chambers are practically equal. If they differ on financial questions, however, they must vote jointly, a procedure which favors the Second Chamber. In recent years the First Chamber has once caused a resignation of the cabinet (the Branting ministry in 1923) by defeating a government bill. Financial supervision over the administration is maintained through an elected committee of revisers, which works between legislative sessions. The minutes of cabinet meetings are checked by a parliamentary committee, and ministers who have acted illegally can be cited before a national court composed of high officials. Finally, the Riksdag can apply to the king for dismissal of members who have given bad advice. In practise these methods of enforcing responsibility are no longer used. It is customary, however, for the Committee on the Constitution to criticize specific governmental acts, which are later debated in the Riksdag. The Swedish committee system is peculiar in that the more important committees, seven in number, for which the constitution provides, are shared by the two chambers, containing as a rule from 8 to 10 members from each. The Swedish practise of not admitting cabinet members to the committees is also unusual.

Norway. The Norwegian parliament, or Storting, instituted by the constitution of 1814 consists of a single chamber of (since 1919) 150 members elected by the proportional system by the votes of all men and women over twenty-three years of age. One third of the mandates are assigned to the cities and two thirds to the country districts, a rule which has hitherto favored the cities. Even during the union with Sweden (1814–1905) the Storting acquired great influence over the government and since the dissolution of the union the parliamentary system has prevailed, although the constitution does not provide for it. The Storting enjoys unusually

wide powers; the monarch has no power of dissolution and in legislative matters only a suspensive veto.

As in Sweden minutes of cabinet meetings are inspected by a Storting committee. If it appears that cabinet ministers have made unconstitutional or obviously harmful decisions they may be summoned before a national court composed largely of Storting members. Such a case occurred most recently in 1926–27 but ended in an acquittal. In the handling of most questions the Storting is divided into two sections, the Lagting, elected by the Storting and consisting of one fourth of its members; and the Odelsting, made up of the remaining three fourths. Legislation is taken up first by the Odelsting. If the Lagting does not approve its decision the entire Storting meets and gives a final verdict, for which a two-thirds majority is required. There are seventeen permanent committees with definite assignments. In practise cabinet ministers may by special request attend the meetings of legislative committees.

Denmark. The composition of the representative assembly instituted in Denmark in 1849 has undergone various changes. It is divided into two chambers, Landsting and Folketing, both elected by the proportional system. Since 1915 three fourths of the 76 members who compose the former have been chosen by direct vote of all men and women over thirty-five years of age; the remaining 19 members are elected by the Landsting itself. The term of all members is eight years. The 149 members of the Folketing are chosen for four years by direct vote of all men and women over twenty-five years of age. Twenty-four seats are set aside to be allocated after the election to those political parties which have not secured representation proportionate to their voting power. In principle both chambers are of equal rank; but the Folketing actually has the greater power, exercising decisive control over the government. Financial measures are first introduced in the Folketing, going to the Landsting so late in the session as practically to nullify the latter's right to make changes. The Folketing can cite ministers before a court composed of judges and representatives of the Landsting. At the democratic reformation of the representative system in 1915 a rule was introduced that the Landsting may be dissolved only if it rejects a measure which has twice been adopted by the Folketing, the second time after regular new elections. The Folketing, on the other hand, may be dissolved at any time. This has happened several times in recent years when there has been no clear majority.

At least five permanent committees are appointed in the Landsting at each session and six in the Folketing; these committees are composed of 5, 7 or 9 members. Each chamber has furthermore a budget committee of 15 members. The competencies of these committees are indistinctly indicated; special committees are often appointed to consider important proposals. Ministers frequently attend committee sessions, although there is no fixed rule.

Finland. During its union with Sweden, Finland had no special legislative representation. The Russian conquest was followed by the summoning in 1809 of an assembly composed of representatives of the four estates, nobility, clergy, burghers and peasants. After 1863 this assembly was convoked regularly but there was no definite division of powers between it and the regent (the Russian emperor). In 1906 a thoroughly democratic reform was instituted, with an assembly composed of 200 members chosen for three years according to the proportional system with universal suffrage for men and women over twenty-four years of age.

When Finland became independent in 1917 the legislature took over all powers of government and in 1919 adopted the present constitution, which provides that the government must enjoy the confidence of the legislature and makes that body the center of Finland's political life. A committee of the legislature, the Constitutional Committee, checks upon the official acts of the ministers; when illegal acts are discovered the legislature may summon cabinet members before a national court composed of high state officials and legislative representatives.

The president has on two occasions, in 1924 and 1930, used his right to dissolve the legislature and order new elections. These dissolutions, however, were brought about not by any real political conflicts but by special circumstances (in 1930 the so-called Lappo movement) which made new elections desirable.

The legislative committees are of great importance. Besides the five special committees which must have from 11 to 21 members, each appointed to handle different groups of subjects, there is the so-called Great Committee composed of at least 45 members. The functions of this committee resemble in some respects those of the Norwegian Lagting. After a bill has been discussed in its appropriate special committee and in the legislature itself it goes to the Great

Committee. The legislature cannot take final action until this committee has reported. Under a special rule ministers may attend committee sessions unless the committees vote to exclude them.

The legislative assemblies of all the Scandinavian states have certain traits in common. The number of professional politicians in them is relatively small, the electors to a great extent choosing representatives of their own social classes. About half the members of the Swedish Second Chamber, for instance, are either farmers or manual workers; the same situation exists in the other countries. The debates are characterized by a matter of fact tone; brilliant oratory or personal attacks are unusual. Committee sessions are of great importance, probably because of the fact that minority governments have been common. The decisive negotiations between parties take place in the committees, where the necessary compromises are prepared. Although the legislatures have been criticized at times for incompetence and logrolling, their prestige is comparatively high and there is little opposition to the representative system. Charges of corruption are rare.

HERBERT TINGSTEN

HUNGARY. The origin of the Hungarian Parliament is at present a highly controversial question. According to the most recent theory the Hungarians originally had the same patriarchal and autocratic form of legislation as the other Mongolian peoples, the Huns, Avars and Turks. The conversion of the Hungarians to Christianity and the marriage of the first Hungarian king, St. Stephen, to a Bavarian princess were followed by the influx of a large number of German knights and the introduction of German (Frankish) institutions. The king before legislating was now required to ask the advice of his council (*senatus*), consisting of the *principes regni*, but he was free to act as he pleased. The statute of 1291 (sect. xxxi) already speaks of the custom of the barons and noblemen to assemble annually. The influence of this body gradually increased as a result of the occasional youth or weakness of the king and especially as a result of the necessity of electing a new king whenever the king died without a natural heir. The nobility, both higher and lower, originally sat together as one house; but the statute of 1608 (*post coronationem*, sect. i) brought about a separation into two houses: the Chamber of Magnates, comprising the higher nobility and the clergy, and the Chamber of Deputies, comprising chiefly delegates of the nobility from the several counties and delegates from the royal free cities.

The Diet as so constituted had very few of the attributes of a western parliament. The lower house did not represent the commons, as in England, but chiefly the lower nobility. While all bills (not merely financial bills) had to originate in the lower house, the upper house had an absolute veto power. There was no principle of ministerial responsibility, the power of the king was correspondingly great, and at times the function of the Diet was reduced to the registering of royal decrees.

In 1848 through the introduction of a responsible ministry and the enlargement of the electoral base of the lower house the Diet was transformed into an institution resembling a modern parliament. Ministers could be impeached by the lower house and tried in the upper house, and the right of interpellation was granted to both houses. By custom an adverse vote in the lower house required the dissolution of the ministry. Although the veto of the upper house was legally absolute, by custom the power over money bills tended to rest in the lower house, the magnates seldom voicing their opposition more than once to a financial measure which the lower house persisted in passing. The power of the monarch although diminished continued very strong. The government was required by custom to consult the king before proposing measures to the Diet and his final veto power was always more than a mere formality. Through the compromise of 1867 with Austria the conduct of foreign affairs, army and finances for the joint affairs of the dual monarchy were reserved to special joint ministers responsible to two delegations elected respectively by the Austrian and Hungarian parliaments.

Although the electoral base of the Chamber of Deputies was increased in 1848 from 200,000 voters to 800,000, even the higher number represented only 7 percent of the population. The proportion of voters to population decreased slightly during the seventy years ending in 1918, and the Chamber of Deputies thus remained essentially an assembly of the nobility. With the coming of the twentieth century there were to be sure more deputies of non-noble birth, but even these newer elements—industrial and financial capitalism and the higher bureaucracy—readily followed the guidance of the nobility. The composition of the Chamber of Magnates,

on the other hand, was altered scarcely at all after the seventeenth century, the only important change being the act of 1885 providing for the appointment of a certain number of life members by the king and for the exclusion of magnates whose land tax was less than 3000 florins (about $1200). On the whole it may be said that during the entire reign of the Hapsburgs the Hungarian Diet served as a fighting organ of the landowning nobility, directed on the one hand against the absolutism of the dynasty and on the other against the rising lower classes—the minority nationalities, the peasantry and the industrial laborers.

After the World War the republican Karolyi government projected a unicameral legislature with a greatly extended franchise, but the regime was overthrown before any elections could be held. The succeeding Soviet government held sham general elections for a National Congress of Soviets. But with the collapse of communist rule the pre-war constitutional regime was restored (except that a regent occupied the place of a Hapsburg monarch) through the agency of a National Assembly convoked in 1920 on the basis of a fairly general and secret ballot. A Second National Assembly, convoked on a more limited ballot, laid down the electoral regulations for the present legislature. Despite the fact that the National Assembly had functioned de facto as a unicameral legislature, it was voted to restore both houses in the definitive regime. The reason for this step was the desire of the conservative parties to insure their rule through an extra bulwark of protection in addition to that afforded by a restricted franchise in the lower house.

The Chamber of Magnates now comprises all Hapsburgs living in Hungary (4), members elected by members of the former Chamber of Magnates (38), representatives of the churches (31), ex officio members (12), delegates of scientific and economic institutions (35), representatives of municipalities—counties and cities —(76), members nominated by the regent (40). The mandate of the elected members is for ten years.

The electoral base of the Chamber of Deputies now includes 58.4 percent of the whole population. Male voters must be twenty-four years old and have four years of school instruction; female voters unless university graduates must be thirty years old and have six years of school instruction or four years instruction and three or more legitimate children or be self-sustaining and have their own household. The signature of 10 percent of the voters of a district is necessary for nomination. As the acceptance of the validity of signatures depends on the good will of the local administration as well as on the liberty of canvassing, this provision works to suppress any manifestations of independent public opinion. It accounts for the uninterrupted reign of the same government from 1922 to 1931 and for the fact that the opposition is limited to 14 Social Democrats and 9 Democrats.

Because of the resort to a regency the power of Parliament may be said to have increased somewhat under the post-war regime. The regent, who was chosen by the first National Assembly and who in the future is to be chosen by the joint assembly of the two houses of Parliament, may be impeached by the lower house and tried by a high court selected from the upper Chamber. He possesses only a limited veto. Of the two houses the lower house continues as before the war to be the more influential. Special powers have been granted to the Chamber of Deputies to override the veto of the Chamber of Magnates in regard to money bills. As in England the power of the legislature as a whole is not restricted by any written constitution, the constitutional provisions not differing from other legislative acts and all acts requiring a simple majority for passage. The development of detailed legislative procedure and standing orders, as formulated December 19, 1928, has been mainly along Franco-Belgian lines.

The prestige of the legislature has always been considerable. Members enjoy high social standing as well as great advantages before administrative authorities. During the First and Second National Assemblies (1920–26), when the wealthier peasantry and the lower middle class generally made considerable inroads, this prestige declined somewhat. But as these elements have since been very much reduced, the Chamber of Deputies is now again, although in lesser degree, the assembly of "gentlemen" which it was before the war. Out of 245 members there are 29 counts and barons and about 100 belong to the untitled nobility. The industrial laborers of Budapest have their representatives in the legislature, but the great masses in the country, particularly the peasants and the laborers, are scarcely represented, because of the prevalence of the open ballot, the electoral procedure and the interference of the administration at elections.

ROBERT BRAUN

SPAIN AND PORTUGAL. *Spain.* In mediaeval times a cortes, or assembly of states, existed in each of the large political entities of the peninsula under Christian control; such assemblies continued to exist when aggregation around the crowns of Castile and Aragon produced general cortes for these realms. In Castile, however, the regional assemblies disappeared in the second half of the fourteenth century, while the general cortes of the crown of Aragon met only on extraordinary occasions to treat questions of interest to all the component states. Aragonese expansion resulted in the establishment of a cortes in Sardinia and in the introduction of Aragonese features into the Sicilian parliament. The origins of the Cortes have not been satisfactorily determined. More or less plausible but unproved is the hypothesis whereby it is derived from the full or extraordinary sessions of the Curia Regia, a consultative body possessing in fact many functions of secular and ecclesiastical government, which existed in León in the early centuries of the reconquest and later acquired feudal characteristics. The classical theory derives the Cortes ultimately from the late Visigothic councils of Toledo, which were attended by the highest church officials and by high dignitaries of the state, who were at the same time outstanding members of the nobility; their specific function was ecclesiastical, although the king might submit secular affairs to them for deliberation. Such fundamental differences of composition and function, however, exist between council and Cortes as to make this theory inadmissible. Although the cortes were attended by the higher nobility and higher clergy, the essential element in their composition consisted of procurators representing the cities and towns under the rule of imperative mandate; in Castile frequently they alone were summoned. The powers and functions of the cortes varied with the place and the time. In judicial theory they were merely consultative and deliberative organs unable to limit the power of the king, except that it was their prerogative to vote taxes and approve financial subsidies sought by the crown. The latter were the chief and characteristic functions of the Castilian cortes. In actual fact, although the Aragonese assemblies were the more powerful, the cortes in both realms intervened in questions of succession to the throne, the regency, legislation, internal administration and foreign policy, particularly during the thirteenth and fourteenth centuries. In Aragon originated a feature which spread widely and which has modern parallels, the *diputación*, or committee, chosen from the various estates to keep watch over the king between sessions and to enforce obedience to the laws.

In the first half of the fourteenth century began the decline of municipal autonomy, aided by the jurists' adoption of the absolutist principles of the Roman law and by the crown's corruption of the elections of the procurators. Consequently the prestige of the cortes waned; they met less frequently and the scope of their competency was restricted. From the time of Ferdinand and Isabella they virtually ceased to exist as a functioning organ of government and from the time of Charles I and Philip II they met only on very exceptional occasions and seldom intervened in important problems. The legal situation, however, remained unchanged. In the eighteenth century local revolts and Bourbon centralization led to the suppression of the regional cortes and the establishment of a single body for Spain, but in Navarre the cortes survived until the early years of the nineteenth century.

Although the introduction of the constitutional regime at the beginning of the nineteenth century revived the Cortes, its spirit, organization and functions were radically changed. While its composition in certain respects resembled that of previous assemblies, the Cortes of Cadiz, meeting as the representative body of a nation which had assumed the sovereignty in its revolt against Napoleonic imperialism, in 1812 promulgated a constitution modeled largely upon the French constitution of 1791. The new constitution established the principle of separation of powers and vested the legislative power in a unicameral parliament. The restoration of Ferdinand VII marked the beginning of a stormy period for the new Cortes, which succumbed repeatedly to the bad faith of the monarchs, who were supported by an ignorant population. Its structure and powers were frequently affected by the vicissitudes of struggles between parties supported only by sections of the army and by certain other minorities. In 1834 a royal statute replaced the constitutional Cortes with two *estamentos*, or estates, possessing hardly any power except the right to petition the absolute monarch. The reintroduction of the modern Cortes as a bicameral body in 1837 was followed by a struggle—the effects of which are displayed in the constitutions of 1845 and 1869—over the composition of the Senate. Under the last monarchist constitution, that of 1876, the issue be-

tween king and parliament was never really settled; but a compromise with respect to the Senate was reached by providing for members who were either to be so in their own right or to be chosen by the king for life as well as for members elected by universities, academies, societies for the furtherance of economic development, ecclesiastical corporations and provincial authorities and by electors chosen by local government officials and the higher taxpayers. For the directly elected Congress of Deputies universal manhood suffrage was not adopted until 1890. In the Cortes of Cadiz representatives sat for the American colonies. After the loss of the bulk of the latter the Antillean territories maintained their representation, although not consistently; but they seldom affected legislation. Until 1918 the committee organization of the two chambers was modeled upon that existing at one time in France: the chambers were divided by lot into sections which gave bills preliminary readings and then, if they favored further consideration, elected a representative to a special committee to report on the particular measure. Elected generally in the same manner were a committee of the budget and several other permanent committees not concerned with subjects of legislation. In 1918, however, also in accordance with French developments a full set of permanent committees to deal with legislative measures was organized, largely on the principle of one for each ministry. In the Congress they were elected by the sections and in the Senate by the whole house.

Except for the requirement that bills regarding taxation and public credit be first presented to the Congress, the powers of the two chambers to legislate and to represent the nation before the monarchy were equal. The Congress was empowered to bring criminal prosecutions against ministers before the Senate acting as a court; only in this case could one chamber, the Senate, be convoked without the other. Political control over the ministry rested on extraconstitutional conventions; but no effective control or supervision was maintained, for two great prodynasty parties of very similar composition held the reins of government by turn on the basis of majorities obtained fraudulently through the Ministry of the Interior. The consequent inability of the lower middle class, the urban proletariat and other groups to obtain adequate representation and the antipolitical views of strongly organized syndicalist workmen together with the internal disintegration of the controlling parties and the reactionary character of the Senate led to the political indifference of the great mass of the nation, including the intellectual minority, and to the loss of prestige of the Cortes. All these circumstances, reenforced by the absolutist tendencies of the crown and the gross interference of the army in civil affairs after it had assumed a position of independence with respect to parliament quite similar to that of the military forces in Japan, facilitated the establishment of the dictatorship of General Primo de Rivera in 1923. It is to be noted that one of the objects of the latter was the suppression of the campaign tenaciously maintained by the socialist and republican minorities in parliament to fix responsibility for the military disaster in Morocco in 1921.

Upon the downfall of the monarchy in April, 1931, the provisional government summoned a Constituent Cortes; this body elaborated a republican constitution, which was promulgated in December, 1931. The Cortes was dominated by republicans and socialists and contained but few members of previous parliaments. It was elected by universal, direct suffrage from multiple member constituencies provincial in scope, replacing what had been for the most part a system of small single member districts. The great cities elected their own representatives independently in proportion to their population. The attributes and powers vested in the Cortes by the new constitution are based upon national experience as well as upon post-war developments abroad. Unicameralism has been adopted. Members are elected for four years; women and the clergy, the latter having hitherto been barred from the lower house, are now eligible.

Out of the failure of the constitution of 1876 to provide for its own revision or to determine clearly in what political organs the ultimate power lay arose the question, which was prominent immediately before the fall of the monarchy, whether the amending power belonged to the simple legislative process or to a constituent cortes with or without the king. The new constitution provides for the proposal of amendments by the Cortes and the election of a constituent cortes, which shall decide on them and which shall subsequently be transformed into an ordinary legislative assembly. The legislative power of the Cortes is further affected by the incorporation of international agreements into constitutional law, by the powers which the Cortes is authorized to grant to autonomous regions and by the rights, with some restrictions,

of initiative and referendum. In certain matters, notably the amendment of the budget and votes of confidence, the Cortes may take action only by absolute or larger majorities, while on the latter question procedure is regulated in order to provide sufficient time for thoughtful deliberation. On the other hand, parliamentary control in certain respects is very pronounced. A permanent *diputación* will act as a check on the executive; the Court of Audit (Tribunal de Cuentas de la República) depends directly upon the Cortes. The latter may bring criminal prosecutions against the president and the ministers before a special court of constitutional guaranties; and automatic expedients familiar elsewhere have been adopted in order to place before the voters conflicts between parliament and the president, in whose election the Cortes participates.

Under the old regime the ineffectiveness of the parliamentary system and a growing recognition of the significance of education led to the establishment of several more or less autonomous organizations authorized to investigate, prepare legislation and carry out the administration within their fields. The new constitution, displaying a similar respect for expert opinion and assistance in the drafting of legislation, contemplates the establishment of advisory bodies for both executive and legislative branches; the preparation of legislation is declared a highly important function of the ministry, and the president of the Supreme Court and the attorney general are ex officio members of the parliamentary Committee on Justice. The Declaration of Geneva (*Declaration des droits de l'enfant*, 1924) is accepted as normative. By empowering the Cortes to delegate to the ministry the function of elaborating the details of a good deal of the legislation which it may enact the authors of the constitution contemplate that the legislative action of parliament will be largely of a comparatively general, policy determining character.

The home rule aspirations of certain regions —Catalonia, the Basque Provinces and Galicia— presage the early establishment of regional assemblies, whose nature and functions cannot yet be ascertained.,

Portugal. From mediaeval times until quite recently the history of the popular assembly in Portugal has coincided in the main with its history in the rest of the peninsula. The Cortes did not meet at all in the eighteenth century. A Constituent Cortes established the modern regime with the constitution of 1822, which like its model, the Spanish constitution of 1812, was idealistic in character and incompatible with the milieu; its career was ephemeral. In 1826 King Pedro IV proclaimed a constitution establishing a moderately liberal parliamentary government on the British pattern. The legislative power was vested in a lower house elected by indirect, limited suffrage and an upper house, or Senate, similar in form to that ultimately adopted in Spain. Against this system were ranged the absolutists led by the infante Miguel, who summoned a Cortes after the ancient manner and had himself proclaimed absolute monarch. After a long period of bitter strife the constitution prevailed and remained in force with occasional liberalizations until the royal dictatorship, which was the culmination of the corrupt rotation in office of the prodynasty parties, brought about the fall of the monarchy. The republican constitution of 1911 entrusted the legislative power to a lower and an upper house, both elected by direct manhood suffrage. Besides the purely legislative function the Cortes possessed certain other powers, especially with respect to administrative and judicial organization. It elected the president of the republic, who had no veto power and whom it could remove; although the constitution did not expressly provide that ministers were responsible to the legislature, they were in fact under its control. Initiation of discussion on many matters was the prerogative of the lower house. Although the colonies were represented in both houses, the upper house was empowered to approve or to reject the nomination of important officials for the oversea possessions. To settle conflicts between the two houses joint sessions were provided. The republican parliament, however, was unable to cope with the problems before it, and a long series of revolts culminated in the establishment in 1926 of a military dictatorship which suspended the constitution.

José Ots y Capdequi

Japan. Although the origins of the Japanese parliament, or Diet, go back to the overthrow of the Tokugawa shogunate in 1867, it was not until 1889, when the emperor granted the people a constitution, that the national legislative assembly was established in its present form.

The conservative forces of the empire offered strong resistance to any advanced steps toward democracy, and the framers of the new constitution made progress only with great difficulty. From this conflict there resulted a series of com-

promises which seriously cripple the power of the Diet by reserving certain important prerogatives to the emperor. The emperor, with the Privy Council as advisory body, was given control over general matters of diplomacy, such as the declaration of war and peace and the conclusion of treaties; he was vested with supreme command of the army and navy, including the determination of their organization and peace-time standing as well as the power to make laws in times of urgent necessity without consulting the Diet. Furthermore the Diet's power over the budget was curtailed by a regulation providing that if the Diet failed to pass a budget that of the previous year was to be considered in force. Two additional factors further curtail the power of the Diet: the shortness of its sessions—it meets for only three months in the year—and the strong bureaucracy built up by Japan's strict civil service laws. The greatest weakness of the Diet lies in its almost complete lack of control over the military branches of the government, around which cling all the surviving forces of the old order and over which its only effective control is the power of studying and passing the budget; its investigation into the activities of the army and navy during the course of debate over the budget tends somewhat to exercise a restraining influence upon them.

In theory the cabinet is responsible to the emperor alone. In the days following the granting of the constitution the leaders of the government were recruited from among the elder statesmen of the Satsuma and Choshu clans, who ruled regardless of the Diet, which functioned chiefly as a forum for criticism. When the first parties were formed the Diet began to use what power it had, principally its right of passing the budget. Party attacks on cabinets headed by the elder statesmen increased in strength until in 1898 the ministers, unable to secure a complaisant Diet, suddenly called on the party leaders to form a government. Party and non-party governments then alternated until 1925, when the last non-party government resigned. Since that date, although the theory of responsibility to the emperor has not been changed, in actual practise the cabinet has been held responsible to the Diet; and particularly since the passing of the universal manhood suffrage law in 1925 the life of a cabinet depends chiefly on the support which it can summon from the majority of the members of the lower House.

In the governmental scheme the Diet occupies a peculiar position without exact counterpart in any other country. Sovereignty in Japan is vested legally in the emperor, not in the people. The Diet is therefore not the lawmaking body, as this function is reserved to the emperor, although "with the consent of the imperial Diet." Any law passed by the Diet must be promulgated by the emperor before it comes into effect. No emperor has ever failed to sanction a law so passed, but this is less because of imperial subservience to the public will than because the preferred position given to government bills before the Diet makes it difficult, almost impossible, for any measure not sponsored by the government to be passed.

The two houses of the Japanese Diet possess the same organization. Contrary to the western custom they do not regulate their own interior organization, which is provided for in a law promulgated by the emperor. Nor do they select their own president and vice presidents; these officers are appointed by the emperor, who must, however, in the case of the House of Representatives, choose from three candidates elected by the House.

The two houses are organized on the committee system. In addition to the Committee of the Whole into which each House can resolve itself there are standing committees on the budget, accounts, petitions, discipline and the like and special committees instituted as the need arises; all committees are elected by the houses.

The members of the Diet possess the constitutional immunities common to countries with a parliamentary form of government. They are not held responsible outside the chamber for their voice or vote within it, and they cannot be arrested during the sessions except in certain special instances.

Laws introduced into the Diet undergo three readings: the first in special committee, the second in the Committee of the Whole (with general debate and the offering of amendments), the third for the final vote. Debate is free and subject to little restriction; the vote is public. While sessions of the Diet are generally open they can be made secret either by vote of the houses or at the request of the government.

In addition to its power over legislation and finance the Diet has other means for supervising the executive. Each House may present addresses directly to the emperor. This power, used to impeach the cabinet when that body was not responsible to the Diet, now has little significance; nor is there much more in the power of each House to make representations to

the government on any subject, since these refer only to future policy and are not binding. Both houses may also pass resolutions, including those of "no confidence." Since these usually lead to the resignation of the government, this power is exercised primarily by the lower House. The Diet may make inquiries into affairs of state; but as it has no power to compel the appearance of witnesses, this prerogative is not as important as it is, for instance, in the United States. Lastly, members of the Diet may question or interpellate the government on all matters within its responsibility. This power plays an important part in Japanese legislation.

The powers of the two houses of the Diet are theoretically equal, but the House of Peers is in some respects in a stronger position, chiefly because it is not subject to dissolution. The prestige of the lower House has, however, increased so greatly in recent years as to more than offset this advantage of position and make it actually the dominant chamber. Until some ten years ago the personnel of the upper House was of generally superior quality, but with the shift of the power of government to the House of Representatives the latter has attracted some strong figures. Because, however, of the corruption which still characterizes elections the average quality of the members has not improved markedly.

With the spread of education, which has reduced illiteracy to less than 6 percent of the whole population, the corresponding rise of the power of the press, the political emancipation of all the male population of the country and the betterment of the economic condition of the common people due to the rapid industrial revolution the prestige of the Diet has risen steadily. But the strength of the political parties and in consequence the effectiveness of the Diet have been weakened by the abnormally large amounts of money which the parties spend for election and which compel them to seek alliance with the capitalist element of the country, thus leading to much corruption. This factor has made the steady progress of democracy difficult and has tended to diminish the efficiency of party government in Japan.

YUSUKE TSURUMI

See: GOVERNMENT; PARTIES, POLITICAL; LEGISLATION; SEPARATION OF POWERS; CABINET GOVERNMENT; CONGRESSIONAL GOVERNMENT; DEMOCRACY; REPRESENTATION; PROPORTIONAL REPRESENTATION; FUNCTIONAL REPRESENTATION; DICTATORSHIP; BICAMERAL SYSTEM; COMMITTEES, LEGISLATIVE; CAUCUS; BLOC, PARLIAMENTARY; COALITION; DEADLOCK; LOBBY; PROCEDURE, PARLIAMENTARY; DEBATE, PARLIAMENTARY; OBSTRUCTION, PARLIAMENTARY; CLOSURE; INVESTIGATIONS, GOVERNMENTAL; INTERPELLATION; IMPEACHMENT; IMMUNITY, POLITICAL; ELECTIONS; CONTESTED ELECTIONS; BY-ELECTIONS; APPORTIONMENT; GERRYMANDERING; GOVERNMENT PUBLICATIONS; FRANKING.

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LEGITIMATION. *See* ILLEGITIMACY.

LE GRAND, DANIEL (1783–1859), Swiss-French social reformer. Le Grand was one of the earliest advocates of international labor legislation. The friendship of his father, a silk ribbon manufacturer, with Pestalozzi and Oberlin early called his attention to the degenerating influences brought about by the industrial revolution on the working class. As early as 1832 he advocated Sunday rest as well as the income tax; a few years later he advocated child labor legislation, the prohibition of night work for women, shorter working hours for all workers and state subsidies for crèches. The Prussian legislation of 1839, based upon the British legislation of 1833, embodied his proposals. This inspired Le Grand to issue appeals to the governments of Europe in the hope of creating a system of continental labor legislation in order to overcome the competition of low standard nations—a program also implicit in Adolphe Blanqui's proposals. His appeals stressed the physical crippling of the working population, its moral decline and the destruction of family life by unlimited overtime as well as the resultant overproduction and crises; he proposed international legislation providing for a twelve-hour day for factory workers, prohibition of night work, limitation of overtime and a six-day working week, with the understanding moreover that higher standards of national legislation were not to be endangered. His appeals influenced both the British and Prussian governments but were met with evasive proposals by the government of Napoleon III. Le Grand's writings were rediscovered in 1875 by Thiersch, who reprinted them in his book, *Uber den christlichen Staat* (Basel 1875). His ideas were incorporated in all subsequent efforts to forward labor legislation, and their influence was acknowledged at the Washington Labor Conference in 1919.

STEPHEN BAUER

Consult: Bauer, Stephan, "Die geschichtlichen Motive des internationalen Arbeiterschutzes" in *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, vol. i (1903) 79–104; Weiss, Raymond, *Un précurseur de la législation internationale du travail: Daniel Le Grand* (Paris 1926).

LEHFELDT, ROBERT ALFRED (1868–1927), South African economist. Lehfeldt was born in Birmingham and studied at Cambridge and London universities. He was for a number of years professor of physics at East London College and at the South African School of Mines and Technology (now the University of the Witwatersrand) in Johannesburg. In the course of time he developed a keen interest in economic problems and in 1916 accepted the new chair of economics at the University of the Witwatersrand.

Lehfeldt brought to the study of economics a profound knowledge of mathematics and a remarkable aptitude for quantitative treatment of economic problems. He attracted international

attention by his plan of currency stabilization through the control of the supply of gold rather than of the demand for it. It called for the establishment of an international commission which would purchase all important gold mines and regulate the value of gold by restricting output in times of rising prices and increasing it in times of falling prices. He was the first to estimate the union's national income and he offered valuable testimony before a number of government commissions in South Africa, particularly before the Kemmerer and Vissering Commission on the resumption of gold payments by the Union of South Africa. Lehfeldt was one of South Africa's outstanding economists and exercised considerable influence in stimulating quantitative economic research in the union.

S. HERBERT FRANKEL

Important works: *Gold, Prices and the Witwatersrand* (London 1919); *Restoration of the World's Currencies* (London 1923); *The National Resources of South Africa* (Johannesburg 1922); Union of South Africa, Finance Department, *Report . . . on the Resumption of Gold Payments* (Pretoria 1925) p. 439–64; "Public Loans and the Modern Theory of Interest" in *Economic Journal*, vol. xxii (1912) 16–33; "The Rate of Interest on British and Foreign Investments" in Royal Statistical Society, *Journal*, vol. lxxvi (1912–13) 196–207, 415–16, and vol. lxxvii (1913–14) 432–35.

LEHR, JULIUS (1845–94), German economist. Lehr completed his studies in forestry at the University of Giessen and became *Privatdozent* at the Forstliche Hochschule at Münden. From 1874 he was professor of economics at the Technische Hochschule in Karlsruhe and from 1885 professor of forest policy and forest history at the University of Munich. Even during his early training in the field of forestry Lehr was particularly interested in its economic aspects.

In economics Lehr's most important works are: *Grundbegriffe und Grundlagen der Volkswirtschaft* (Leipsic 1893; published as pt. i, vol. i in Frankenstein's Hand- und Lehrbuch der Staatswissenschaften) and *Politische Ökonomie in gedrängter Fassung* (Munich 1892; 4th ed. by C. Neuburg, 1905). Minor publications dealt with currency and tariff problems. Lehr was one of the few followers of the Austrian school in Germany and attempted to apply the mathematical method to the marginal analysis of price and wage problems but with little success. He was, however, more effective in the application of the mathematical method to forestry economics. His essay "Forstpolitik" in T. Lorey's *Handbuch der Forstwissenschaft* (2 vols., Tübingen 1887–88; 3rd ed., 4 vols., 1912–13, vol. iv, p. 91–287) was the first comprehensive work on the subject and stimulated later writers in this field. He defended the viewpoint that the utilization of forests be left to private enterprise, although he urged compulsory reforestation of those woodlands which are definitely suitable only for growth of timber. A student of Gustav Heyer, he advocated the cultivation of forestry statics (a discipline dealing with the ascertainment of the value of the forest produce), to which he made significant contributions. Besides numerous articles in the *Allgemeine Forst- und Jagdzeitung*, of which he was coeditor, he wrote the masterly treatise "Waldwertrechnung und Statik" for Lorey's *Handbuch*, published separately as *Beiträge zur Statistik der Preise, insbesondere des Geldes und des Holzes* (Frankfort 1885), in which he made important contributions also to the methodology of index numbers.

MAX ENDRES

Consult: Weber, R., in *Zeitschrift für Forst- und Jagdwesen*, vol. xxvi (1894) 728–31.

LEIB, JOHANN GEORGE (1670–1727), German cameralist. Leib, who was trained as a jurist, was in 1710 appointed royal Polish and electoral Saxon councilor and *Referendar* and in 1716 councilor of commerce. He was a typical representative of the German cameralists, who adopted and cultivated the doctrines of the Austrian cameralists. His cameralistic approach was evident in his treatise *Von Verbesserung Land und Leuten, und wie ein Regent seine Macht und Ansehen erheben könne, zerfällt in 4 Proben* (Frankfort 1708), in which he claimed that to increase his own well being, power and prestige a sovereign must be concerned primarily with the welfare of his subjects. A typical mercantilist, he stated as a basic rule that money must remain in the country. The country should be populated not merely by many but by useful men. The subjects not only should support themselves through their industry but should also draw money into the country. For the stimulation of production he recommended the creation of an "academy of manufacturing," and for the support of trade the founding of trading companies and a note and deposit bank (*Giro- und Lehnbank*). He considered the excise the most just tax and warned against every deterioration of the coinage. Although national considerations were at the basis of his economic views, he was not unfamiliar with international economic problems. He pointed out the advantages of oversea trade and recommended for its

encouragement the establishment of an Asiatic and African trading company. He considered that a favorable balance of trade, however, was absolutely necessary for the prosperity of the state. Like the Austrian cameralists, Leib attacked French attempts to achieve political and economic supremacy.

KURT ZIELENZIGER

Important works: *Des grossen Kaysers Caroli V. Regier-Kunst, oder väterliche Instruction, wie sein Sohn Philippus II., König in Spanien, wohl und glücklich regieren sollen* (Leipsic 1714); *Abfertigung des Unfugs der neuen Bibliothec oder Nachrichten und Urtheile von neuen Büchern, wegen Caroli V. Regierkunst* (Leipsic 1716).

Consult: Zielenziger, Kurt, *Die alten deutschen Kameralisten*, Beiträge zur Geschichte der Nationalökonomie, no. 2 (Jena 1914) p. 372–90.

LEIBNIZ, FREIHERR VON, GOTTFRIED WILHELM (1646–1716), German philosopher, scientist and statesman. Leibniz was the last European thinker to master the whole of knowledge. His intellectual activity extended to philosophy, mathematics, natural science, theology, history, politics, jurisprudence and philology, and in addition he was a practical statesman engaged in prodigious plans for furthering the peace of Europe and the interests of the German empire.

The significance of Leibniz' philosophy for the intellectual history of Europe in the seventeenth and eighteenth centuries consists in the fact that he gave the clearest and keenest systematic expression to the fundamental problem of the relationship between world and individual, between macrocosm and microcosm, and endeavored to solve it by new intellectual methods. According to Leibniz individual and universe are not antitheses nor do they bear to each other the relation of a single part to a purely quantitative whole consisting of a number of parts. Individual and universe are rather related qualitatively; the universe can be conceived only in the form of individuality and individuality can be determined and defined in its essence only in its relationship with the universe. This concept forms the starting point of Leibniz' theory of monads and his system of monadology. In this system every individual "I," every monad, implies the totality of the world—not in the sense of actually comprising it but in the sense of ideally representing it. Thus there results in contrast with Spinoza's monism a strongly pluralistic view of the world. Each individual being represents the universe of phenomena; but each apprehends it from a different point of view and thus gives to the representation a particular distinctness and a unique stamp. These particular eternally differentiated "perspectives" of the universe are, however, bound to one another by a common fundamental law which governs them all.

Along with the principle of the monad goes as its necessary complement and fulfilment the principle of preestablished harmony. It states that from monad to monad no direct interaction, no *influxus physicus*, takes place, but that it is in the fundamental nature of every individual being to develop purely from its own principles a definite set of perceptions, which stands in the closest connection with the perceptive sets of other subjects. All these sets thus form one single set, in that in all of them, however much they may differ from one another, the same order is expressed, the same amenability of the universe to law. The metaphysical foundation for this unity is found according to Leibniz in the unity of their source; for since they all issue from the highest monad, God, His Being is expressed in every one of them, although in varying degrees of distinctness and, as it were, in varying outline.

The ethical and social doctrines of Leibniz are based on the concept of natural law. Natural law provides for him stable and changeless standards of morals, which possess the character of eternal truths and are capable of a firm a priori deduction. First and foremost among the basic moral standards is the freedom of the individual and his right to intellectual and moral improvement. These basic privileges must in no way be encroached upon or limited by positive regulations. In the development of these ideas Leibniz followed theological models, especially the Augustinian concept of the *Civitas Dei*, but his fundamental tendency is directed to secularizing this concept; i.e. releasing it from all specific supernatural ideas and basing it purely on the *lumen naturale*, on unmistakably evident rational examination. All "rational souls" are entitled to equal privileges, for each belongs to the great "republic of spirits" at whose head stands God. For the building up of the state and of society there follows therefore the postulate that in them too the individual must never be considered as a mere part which under certain circumstances must be sacrificed to the whole. Rather each individual subject as a free personality within the unity of the state and of society preserves his own privileges. No mere authoritative decree, no mere positive legal ordinance,

must encroach upon this natural right; for above the positive law, the *jus strictum*, stands the higher moral law, the law of equity, *jus aequitatis*. On similar grounds Leibniz attacked the institution of slavery, maintaining that the right of possession could apply only to things not to persons. With these principles Leibniz helped to create the philosophical foundation of the doctrine of the "inalienable rights of man" and to prepare the ground for the development which this doctrine was to receive in the period of the Enlightenment.

In the field of practical politics Leibniz planned far reaching schemes which were primarily designed to protect the equilibrium of Europe and the independence of the German empire against the advance of France. Leibniz sought to meet the danger of Louis XIV's plans of conquest by proposals for the reform of the German imperial administration, which sought to achieve a more closely knit coordination of the forces of the empire, and by a policy of union against France. Leibniz also outlined a plan for an expedition to Egypt, which he placed before Louis XIV with a view to diverting him through a campaign against the Turks from his plans of European conquest. In the field of ecclesiastical policy his chief aspiration was the reestablishment of ecclesiastical unity in the Christian world. His negotiations with the leading representatives of Catholicism, especially with Bossuet, were wrecked by the stand taken by the latter, who demanded as a condition of ecclesiastical unity the unreserved approbation by the Protestants of the decisions of the Council of Trent. Leibniz then endeavored to bring about the union of the Lutheran and Reformed churches. Here too his plans were never realized.

Along with questions of domestic and ecclesiastical politics Leibniz occupied himself unceasingly and tirelessly with that of the organization of science and learning. The later organized Berlin Akademie der Wissenschaften was founded essentially after his plans; it developed out of the Societät der Wissenschaften of Berlin, which Leibniz headed in 1700. Leibniz also outlined extensive plans for the founding of learned societies in Dresden, St. Petersburg and Vienna.

In all his many sided practical activity the general trend of Leibniz' basic theoretical ideas, the concepts of the monad and preestablished harmony, is unmistakable. The true concept of unity is not opposed to that of multiplicity; rather it implies multiplicity and seeks to be its intellectual expression. Even his attempts at the organization of science and his pedagogical interests express a principle derived from his theoretical system. Although all individuals, or monads, are necessarily different, this difference cannot lie in the perceptual content of each monad—since every subject, according to his special view, represents the whole of the world—but is to be found in the method of representation, in the varying degrees of clearness and distinctness with which the universe is represented in the various subjects. The higher monads are differentiated from the lower by the fact that they are capable of a higher degree of clarity and distinctness in their ideas. Hence the aim of intellectual and moral progress is to seek an ever clearer view of the entire physical and moral world and an ever sharper differentiation of the principles underlying them.

With such ideas, which unmistakably spring from the primary premises of his doctrine, Leibniz set up a theoretical and moral program which had a decided effect on posterity and with which he became the true originator and founder of the philosophy of the Enlightenment.

ERNST CASSIRER

Works: The most complete edition of Leibniz' works in regard to history and political science is that edited by Onno Klopp, 11 vols. (Hanover 1864–84). The Preussische Akademie der Wissenschaften is now preparing a new complete edition in 40 volumes (of which five have already appeared, Darmstadt 1923–31), which will be particularly valuable for Leibniz' correspondence. The most important philosophical works of Leibniz have been translated into English by R. Latta in *The Monadology and Other Philosophical Writings* (Oxford 1898).

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Atti, vol. xliii, pt. ii (Naples 1915) p. 1–186; Baruzi, Jean, *Leibniz et l'organisation religieuse de la terre* (Paris 1907); Jordan, G. J., *The Reunion of the Churches, a Study of G. W. Leibnitz and His Great Attempt* (London 1927); Kröger, A., *Leibniz als Pädagog* (Leipsic 1900); Daville, L., *Leibniz historien* (Paris 1909).

LEIST, BURKARD WILHELM (1819–1906), German jurist. Leist was successively professor at Basel, Rostock and Jena, where he died after a long illness. Because of his marked personal peculiarities it is difficult to associate him with any school. He began his career with strictly Romanistic studies and his *Die bonorum possessio, ihre geschichtliche Entwickelung und heutige Geltung* (2 vols., Göttingen 1844–48) still belongs in method to the old historical school. In addition to history Leist began to pursue systematic analytical researches, which he published as *Civilistische Studien auf dem Gebiete dogmatischer Analyse* (4 vols., Jena 1854–77). An even more important work of this character was his continuation of Glück's celebrated commentary on the Pandects, *Ausführliche Erläuterung der Pandecten*. In his treatment of the Roman law Leist set himself against its wholesale reception and demanded the abandonment of such of its institutions as had no practical value in modern life. In the 1880's, however, he began definitely to follow a bent which set him apart from the Romanists of his time. In the *Civilistische Studien* he had refined upon the dogma of the historical school by distinguishing two kinds of legal norms. Some were *naturalis ratio*, or given by the conditions of life, needing only the sanction of custom or legislation to become positive law, but others were *civilis ratio*, or the products of particular needs. Leist even attempted to associate this distinction with that which the Romans made between *jus gentium* and *jus civile*. To illustrate his juristic theories he followed a direction opposite to that of the Roman mediaevalists. He went back to the Aryan sources of the Roman law, and the result was a series of three great works, *Graeco-italische Rechtsgeschichte* (Jena 1884), *Alt-arisches jus gentium* (Jena 1889) and *Alt-arisches jus civile* (2 vols., Jena 1892–96), in which he brought Latin law into close relation with Indian and Greek law.

HANS FEHR

Consult: Bekker, Ernst Immanuel, "Burkard Wilhelm Leist unter seinen Aequalen" in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung*, vol. xxviii (1907) 129–57; Stintzing, R. von, and Landsberg, E., *Geschichte der deutschen Rechtswissenschaft*, 3 vols. (Munich 1880–1910) vol. iii, pt. ii, p. 835–42.

LEISURE. Philosophy and the common judgment of mankind are at one in holding leisure among the chief goods of life. Although in common parlance and in general practise leisure, the opportunity for disinterested activity, tends to become confused with amusement or recreation, one means of its utilization, yet in the high evaluation generally placed on leisure there lies a confused recognition of what in philosophy becomes more explicit. "Wisdom cometh by opportunity of leisure," said the ancient prophet. For Aristotle there were three kindred ideas expressing the end of human life: theoretical wisdom, happiness and leisure. Leisure was more than the condition for the attainment of the other two; it represented the satisfaction of the truly disinterested interest, the achievement of understanding, which is man's highest goal.

For purposes of social analysis the concept is usually narrowed—and widened—to mean simply freedom from activities centering around the making of a livelihood. It is indeed a rather bitter paradox that leisure has come to have a connotation of loose relaxation and that the term leisure class carries an accent of opprobrium. Earlier periods would have been far more ready than the present to see even in certain pursuits which result in the gaining of a livelihood exercises in leisure. The artist, the scientist, the scholar, work at their art or science or research for their living; in another sense theirs is the privilege of constant leisure to devote themselves to what are for them the highest pursuits. The methods by which the artist and scholar were supported in older societies emphasized the latter aspect of their position, as the commercial payment for their services emphasizes the former aspect. One might say that the more nearly ideal the organization of society, the more perfectly would every individual's work be adapted to his abilities and the greater would be the number of people who enjoyed similar qualitative leisure through rather than outside of their work.

The very concept of leisure as contrasted with work is largely foreign to primitive societies. To every member of the community falls his share of labor and of play, his opportunity for participation in the important rites and mysteries. The orientation of life is physiologically as well as socially toward long periods of leisurely work interspersed with occasional periods of intense expenditure of energy. The separation of a priestly class marks the first step toward the development of groups privileged through the

possession of leisure. The fact that the priest's activities are regarded by the community as in the highest degree necessary to its survival in no way negates this interpretation. The social implications of the development become clearer when the priestly class multiplies beyond a point consistent with its spiritual functions and engages in governmental and scholarly pursuits. Concurrently or somewhat later the emergence of a distinct warrior class and the recognition of a difference between the pursuits of men and those of women lay the basis for the growth of other leisure classes.

The full meaning of leisure is perhaps never apparent until one portion of society is deprived of all possibility of its enjoyment. Throughout antiquity slavery and slavery alone made possible to the higher classes emancipation from the necessity for constant attention to material needs. This indeed was its justification to the Greeks. Some such justification underlies all willing and thoughtful acceptance of a leisure class. The reverence and the privilege accorded the Chinese scholar are also the result of a conviction of his social indispensability. Something of the force of the concept of leisure as it developed in antiquity is indicated by the fact that the English word school is derived from the Greek word for leisure (*schole*). The philosophers were not unaware of the problem of the unprivileged, but their only solution was further insistence on freedom of the citizen from manual labor and labor for pay.

Even the artist and the sculptor were not regarded by Aristotle or Plato as leisured men, since the nature of their crafts tied them down to constant repetition of one kind of action and thus robbed them of the freeman's ability to choose his interests. The rigor of this conception has less appeal to the modern social philosopher; but it is grounded in a distinction which he too must recognize. Leisure is time at the disposal of the complete man; the man exhausted by fourteen hours of labor or eight hours under a speed up system and harassed by insecurity possesses no leisure but only time for recreation that will enable him to return again to toil.

The leisured members of society have been most often those with assured incomes not dependent on their personal efforts—landed proprietors, rentiers, holders of sinecures. Probably in every age there have been individuals who secured leisure by boldly claiming it as a necessity of existence and stripping themselves of all other requirements except those which can be supplied by a minimum of "making-a-living" activity. Certain occupations, more frequent in pre-industrial societies than today, in themselves afford considerable leisure. The shepherd and the small proprietor in rich country, if they have little opportunity for variety in the use of leisure, have long hours of freedom, out of which have come through the centuries folk songs, folklore and dancing. The craftsman of some skill who could travel about from country to country, as in the early period of the compagnonnage, had many of the perquisites of leisure. Under some conditions, although decreasingly in the modern world, the sailor has had leisure. The soldier of fortune often possessed it, but the leisure of the modern military man is of a different and spurious character. It should be remembered too that throughout antiquity and the Middle Ages the normal number of holidays during the year was about 115. Except in periods of unusual economic stress even slaves enjoyed such holidays, although their means of utilization of such time were limited. But the grouping of work around numerous holidays probably resulted in more effective leisure than the one day of rest out of seven in industrial society.

Throughout history where definite leisure classes have come into existence they have been based upon wealth—whether in the form of slaves, land, securities or the rights and goods of a corporate body, such as the church. In general such classes have been the inheritors of wealth, not in any dynamic sense its makers. In periods of rapid economic change the makers of fortunes have time for nothing but fortune making and luxury spending. A leisure class may fulfil certain productive or entrepreneurial functions, as did most of the English squires and many of the Roman landed proprietors living in the smaller villas scattered throughout Italy. A landed aristocracy which has not become too affected by absenteeism ordinarily combines leisure with such productive activity. On the other hand, a class endowed with the privilege of leisure may develop for itself a great number of time consuming ritualistic functions, such as those of a military caste or of the followers of a royal court or of the society woman of the contemporary middle and upper classes, which preclude the enjoyment of any real leisure. A leisure class is not essentially a wealth worshiping or a spendthrift class. Where the possession of wealth is so taken for granted that it loses all value as a sign of personal repute, other criteria come to the fore, among them those of individual

worth and cultural fitness. But a leisure class may also take over the standards of other groups, and not infrequently throughout history leisure classes have been caught up in a whirl of luxury spending: the despots of Asia, with their fabulous riches; the landed aristocracy of Egypt, with its nominal military duties and its days of hunting and nights of feasting; the luxurious urbanites of imperial Rome; the privileged of Renaissance Italy and the court of Louis XIV. If the display consisted in many cases of artistic appreciation and civilized enjoyments, it was nevertheless on a lavish scale and in contrast to a complete lack of opportunity for the masses.

Whatever complaints might be made against the luxury of the rich, however, the desirability of leisure itself was never really brought into question throughout antiquity or the Middle Ages. With the growth of capitalism there appeared a new and condemnatory attitude. The Puritan emphasis on the moral duty of continuous industry reflected the needs of a mercantilistic and later of an industrial economy. The further disparagements of arts and amusements represented the reaction of the vigorous rising bourgeois class to the luxury and display of the older aristocracy. The "economic man" appeared in the theory of political economy. The high point was reached with Carlyle's glorification of work. The economic and moral bases of the doctrine are contained in Carlyle's bitter observation that a man with an income of £200,000 a year consumes the whole fruit of 6666 men's labor and does nothing for it but "kill partridges." Ruskin and his followers went even farther and demanded that every individual spend some time each day in manual labor. This Puritan doctrine of work with its emphasis on the seriousness of life as a business took firmer hold in the United States than in Europe, where century old traditions could not so easily be displaced. The doctrine was most effectively expressed for the United States by Benjamin Franklin in his *Advice to Young Tradesmen* and *Necessary Hints to Those That Would Be Rich.* Perhaps the effort of clearing a continent for settlement required some such emphasis on material things; but the gospel persisted past the period of its usefulness, intertwined with philosophies of activism, doctrines of progress and interest in the psychology of success.

It is one of the most striking commentaries on modern civilization that the machine, which offers the possibility of a measure of leisure for all, as slavery made possible leisure for a few, has thus far brought only unemployment on an increasing scale, idleness for many women of the middle class and, on the other hand, extended opportunities for education and leisure to the adolescents of the community. This failure of economic organization is perhaps partly to be traced to contemporary attitudes toward work and leisure. Certainly what the normal work span of the future is to be depends partly upon technological achievement, but it depends quite as much upon the balancing of choice between increased productivity and increased leisure. The reality of such choice is most obvious in a planned economy. The problem in Russia is still largely theoretical; the existing emphasis in that country on the provision of music, drama and art represents the influence of cultural traditions which regard such things as among the necessities even in war time; but if the Soviet system does not break down, the choice between shorter hours and increased productivity will sooner or later come up in acute form. Less visibly but quite as surely all of modern society is faced with a similar choice.

Certain changes of attitude are already apparent. When the eight-hour laws were under discussion in 1916 and 1917, the prospect of such accretions of free time led governments and social reformers to talk fearfully of the leisure "problem." Temperance societies prepared for increased drunkenness and attention was centered on the real evils of commercialized recreation as it prevailed in most large cities. Concurrently with the passage of the limitation of hours legislation a number of the European governments set up official commissions to study the problem of workers' leisure activities. In 1924 the International Labor Office devoted part of its sixth conference to a discussion of the problem; in 1930 the First International Congress on Workers' Spare Time met at Liége with 300 members from eighteen countries, the governments of fourteen of which were officially represented. In the discussions of this congress and previously in those of the International Labor Office the emphasis had completely shifted from repression of commercial recreation to provision of facilities for other ways of utilizing leisure, and the conception of leisure as a problem had given way to its recognition as an opportunity and a cultural necessity.

The gains involved in the eight-hour laws were largely lost through speeding up systems and through tacit abrogation of the legislation in a period of crisis. The achievement of real

leisure for all is still a dream of the future. Nevertheless, the direction of recreational activities even under present conditions is of importance not only as indicating attitudes but because of the indirect influence on production. Without attempting to solve the problem of adequate housing for workers, the groups in Europe interested in workers' leisure increasingly insist that proper housing and city planning are essential prerequisites to socially or individually valuable utilization of leisure. Excessive urbanization and bad transportation facilities deprive the worker of much of his nominal free time; lack of space in his home throws him upon the streets and into commercialized amusements. The official leisure committees of the various European countries have encouraged and aided financially the allotment movement with its attempt to secure for every worker a small plot of ground on the outskirts of the city; they have aided the development of play fields and stadia and helped support the numerous athletic societies which have increased so rapidly since the war. They have either supported or set up choral and theatrical societies and organizations to promote folk dancing and public festivals. The great increase in free libraries since the World War has been largely due to their efforts and they have strengthened and supplemented the already existing adult education institutions. In addition the various trade union groups, the cooperative organizations and the socialist parties not only occupy a great deal of the leisure time of their members but themselves organize gymnastic societies, workers' classes and art exhibits, theatrical groups and similar projects.

In the United States the recreation movement is limited largely to adolescents, trade unionism is weak and, with a few notable exceptions, adult education is non-existent. The limited traditions of community living and the greater emphasis on the achievement of wealth as a goal have retarded the development of the idea of creative enjoyment of leisure. Nevertheless, here as well as in Europe the automobile, the moving picture and the radio have provided the means for new forms of recreation which taste and economic change might transform into the basis of real leisure.

The tone of any society is largely determined by the quality of its leisure, whether that leisure be restricted to a few or spread widely. The definite leisure classes have played varying social parts, some purely wasteful, some creative. It may be questioned whether until very recent times the economic basis for art existed except in class inequalities. In the field of government a privileged leisure class may still have a function. The advantages of a group trained to an interest in public affairs, not in partisan affairs, cannot be lightly dismissed. The success of England in governing an empire and in making democracy work with a degree of satisfactoriness not achieved in any other country is in no small part due to the fact that it inherited from an earlier system a leisured class imbued with traditions of a statesmanship which, if it was conservative, was at least not corrupt.

If the leisure classes no longer need be the carriers and supporters of artists and scientists, they retain their more fundamental function of the carriers of tradition. Leisure is not only the germinating time of art and philosophy, the time in which the seer attains glimpses of the values and the realities behind ordinary appearance; it is also the opportunity for appreciation, the time in which such values get across into common experience. The quality of a civilization depends upon the effectiveness of the transmission of such values. The widespread enjoyment of leisure is thus a matter of greatest moment, culturally as well as economically. Modern mechanisms open up new possibilities of communication; it remains to be seen what traditions and standards will be spread.

IDA CRAVEN

See: ARISTOCRACY; CLASS; SOCIAL PROCESS; LUXURY; GENTLEMAN, THEORY OF THE; COMMERCIALISM; INDUSTRIALISM; PURITANISM; HOURS OF LABOR; HOLIDAYS; VACATIONS; CONSUMPTION; AMUSEMENTS, PUBLIC; RECREATION; PLAY; SPORTS; PHYSICAL EDUCATION; ATHLETICS; PLAYGROUNDS; COMMUNITY CENTERS; CLUBS; TOURIST TRAFFIC; RESORTS; ALLOTMENTS; PUBLIC LIBRARIES; EDUCATION; WORKERS' EDUCATION; ADULT EDUCATION; ART; DANCE; THEATER; AMATEUR; WOMAN, POSITION IN SOCIETY.

Consult: Veblen, Thorstein, *The Theory of the Leisure Class* (new ed. New York 1912); Brown, A. Barrett, "The Leisure Problem" in *Hibbert Journal*, vol. xxviii (1929–30) 455–64; Stewart, Herbert L., "The Ethics of Luxury and Leisure" in *American Journal of Sociology*, vol. xxiv (1918–19) 241–59; Weber, Max, *Die protestantische Ethik und der Geist des Kapitalismus*, Gesammelte Aufsätze zur Religionssoziologie, vol. i (2nd ed. Tübingen 1922), tr. by T. Parsons (London 1930); Burns, C. D., *Leisure in the Modern World* (New York 1932); Cutten, G. B., *The Threat of Leisure* (New Haven 1926); Joad, C. E. M., *Diogenes, or the Future of Leisure* (London 1928); Lamb, Charles, *The Essays of Elia* (new ed. by H. E. Woodbridge, New York 1927); Pangburn, Weaver, "The Worker's Leisure and His Individuality" in *American Journal of Sociology*, vol. xxvii (1921–22) 431–41; Rives, Paul, *La*

corvée de joie (Paris 1924); May, Herbert L., and Petgen, Dorothy, *Leisure and Its Use* (New York 1928); Bouthoul, Gaston, *La durée du travail et l'utilisation des loisirs* (Paris 1924); series of articles on use of leisure time in different countries, in *International Labour Review*, vol. ix (1924) 227–41, 573–86, 815–938; International Labour Office, "Report on the Development of Facilities for the Utilisation of Workers' Leisure" in *International Labour Conference: Sixth Session, Reports*, 4 pts. (Geneva 1924) Report no. i, followed by two supplementary reports; International Labour Office, *Annual Review*, 1930 (Geneva 1931) p. 455–59; Depasse, C , and André, A., *L'organisation des loisirs du travailleur en Belgique et à l'étranger* (Paris 1931).

LELEWEL, JOACHIM (1786–1861), Polish historian. Lelewel, who was of German ancestry, was born in Warsaw and studied at the University of Vilna, where he was appointed lecturer in history in 1815. Three years later he became librarian and lecturer in history at the University of Warsaw; he returned to Vilna as professor of history in 1821. In 1824 he was dismissed from his post by the Russian authorities for participation in student political activities. In 1828 he was elected to the Polish Diet in Warsaw and for a time was in charge of the educational system of the Kingdom of Poland. During the insurrection of 1831 he was a member of the Polish national government but with the collapse of the insurrection he fled to France, where he assumed the leadership of the democratic elements of the Polish emigration. Banished from that country in 1833, he settled in Belgium, where he resumed his scholarly work without, however, discontinuing his activities on behalf of Polish freedom. All his life he pleaded the cause of international solidarity, social justice and equality of rights for the Jews. He maintained close relations with Lafayette, Mazzini and Engels and is said to have been one of the signatories to the *Communist Manifesto*.

Lelewel is the outstanding nineteenth century Polish historian. He brought to his subject a critical mind, an exceptional capacity for work and an expert knowledge of geography, bibliography, numismatics and other auxiliary disciplines, fields in which he himself had made pioneering contributions. He conceived of history as the all embracing study of the development of mankind and in his studies aimed at discovering the chain of causes which binds together the succession of historical events. In explaining historical phenomena he studied the psychology of the individual and of the group as well as the physical and sociological milieu of the nation. Although he was a rationalist in his understanding of the past, like Herder and the romantic historical school he centered his studies around the development of the nation as a distinct political and cultural entity existing since earliest times. He saw the only basis for historical judgment and the sole guide for shaping future policies in national values as crystallized in the collective experience of the people. A great patriot and ardent democrat, he found in the early Polish institutions the elements of democracy, freedom and social justice which he deemed essential to a happy national life in the future.

MARCELI HANDELSMAN

Works: Lelewel's major works on Polish history are collected in *Polska, dzieje i rzeczy jej*, 18 vols. (Poznań 1846–68); *Wykład historji powszechnej* (Outline of general history), 5 vols. (Warsaw 1850); *Pamiętnik z roku 1830–31* (Memoirs) (Avignon 1832; new ed. by J. Iwaszkiewicz, Warsaw 1924;) *Bibliograficznych ksiąg dwoje* (Two bibliographical books), 2 vols. (Vilna 1823–26, new ed. 1927); *Numismatique du moyen âge*, 3 vols. (Paris 1835); *Géographie du moyen âge*, 5 vols. (Brussels 1850–58).

Consult: Krzemiński, S., in *Wiek XIX. Sto lat myśli polskiej* (Nineteenth century—one hundred years of Polish thought), vol. iv (Warsaw 1908) p. 1–41, with complete bibliography; Śliwiński, Artur, *Joachim Lelewel. Zarys biograficzny lata 1786–1831* (Warsaw 1918, new ed. 1932); Chodynicki, K., *Lata uniwersyteckie Lelewela (1804–08)* (The university years of Lelewel) (Vilna 1929); Modelski, T. E., "Sprawa powołania J. Lelewela na katedrę historji w Wilnie" (The appointment of Lelewel as professor in Vilna) in *Ateneum wileńskie*, vol. vi (1929) 167–201, 486–582; Korzon, T., "Pogląd na działalność naukową J. Lelewela" (A view of the scientific activity of Lelewel) in *Kwartalnik historyczny*, vol. xi (1897) 257–309; Warnka, S., *Joachima Lelewela zasługi na polu geografji* (Lelewel's contributions to geography) (Poznań 1878); Handelsman, M., *Historyka* (Warsaw 1928) p. 82–89; Cichowicz, A., *Wybór pism historyczno-wojskowych* (Selected historico-military writings) (Warsaw 1923) p. 14–20; Chodynicki, K., "Zasadnicze składniki syntezy dziejowej Lelewela" (The essential elements of the historical synthesis of Lelewel) in *Przegląd współczesny*, vol. ix, nos. 97–98 (1930) 259–66, 443–54; Limanowski, Bolesław, *Historja demokracji polskiej w epoce porozbiorowej* (History of Polish democracy in the postpartition period), 3 vols. (rev. ed. Warsaw 1922–23).

LEMIRE, ABBÉ JULES (1853–1928), French priest, politician and social reformer. Lemire's later preoccupation with the problem of drawing the clergy into the movement for social reform was foreshadowed in his *Le Cardinal Manning et son action sociale* (Paris 1893). The same year he was elected deputy from Hazebrouck, a department of his native French Flanders, and retained his seat in the Chamber uninterruptedly until his death. He soon evinced an attachment to the

republic and to democracy, which resulted in his making more friends on the left than on the right. He made an effort to develop a party organization for the Christian Democrats, who were led by Léon Harmel. In order to stimulate social activity among the lower clergy Lemire with the support of several archbishops organized two congresses of priests, the first at Reims in 1896 and the second at Bourges in 1900. During the same period he created a society known as the Ligue du Coin de Terre et du Foyer for the promotion of one of his favorite projects, state provision of a small plot of land for every family. Through his efforts and those of the league this idea was realized by the law on the *bien de famille* passed in 1909 and modeled on the American Homestead Act. Little advantage, however, was taken of the privilege. Lemire therefore turned his attention to the creation of workmen's gardens to be organized on the outskirts of towns through private or municipal societies. Between 1903 and 1923 he directed the convocation of six national congresses to deal with this question. During the first decade of his membership in the Chamber, while Leo XIII was pope, Lemire had enjoyed the esteem and his bold innovations the support of the papacy. But he made enemies among the royalist and conservative Catholics, who were especially powerful in the diocese of Cambrai, to which he belonged as priest. Under Pius X they had their revenge. Although he failed in his attempts to prevent Lemire's candidacy for deputy in 1910 and again in 1914, the archbishop of Cambrai was able to inflict a canonical penalty upon him. The penalty was lifted during the World War.

GEORGES WEILL

Consult: Jean-Robert, and Remy, Gabriel, *Une grande figure . . . l'abbé Lemire* (Paris 1929); Droulers, Charles, *Chemin faisant avec l'abbé Lemire* (Paris 1929); Weill, G., *Histoire du mouvement social en France, 1852–1924* (3rd ed. Paris 1924) p. 418–19; Barbier, E., *Histoire du catholicisme libéral et . . . social en France (1870–1914)*, 5 vols. (Bordeaux 1923) vols. iii–iv.

LEMONNIER, CHARLES and ÉLISA, French reformers. After giving up a chair in philosophy because of a conflict over his social theories Charles Lemonnier (1806–91) led in developing the pacifist ideas of the Saint-Simonian school of socialism. Arguing that universal organization for peace depended on organizing Europe along the lines of the United States of America and the Swiss Confederation he proposed to group all republican states under a superior government with power to administer common finances and a federal army. The constituent states were to be disarmed. In 1867 he helped found the still existing Ligue Internationale de la Paix et de la Liberté, of which such men as Hugo, Quinet, Garibaldi and Mill became members. He also helped found and edit its organ, *Les États-Unis d'Europe*, which has appeared intermittently since 1868 and is now in its fifteenth series. In 1873 he drafted an arbitration treaty, probably the first legal formulation of ideas theretofore expounded only in moral and political form.

Among Lemonnier's works is a biography of his wife, Élisa Lemonnier (1805–65), who in 1848 under the influence of her husband's Saint-Simonian ideas opened a workshop for mothers of families impoverished as a result of the February revolution. Observing their incompetence and awkwardness she resolved to undertake the moral and vocational education of girls. In 1856 she founded a Société de Protection Maternelle pour les Jeunes Filles, which in 1862 became the Société pour l'Enseignement Professionnel des Femmes. The success of the two non-sectarian Écoles Élisa Lemonnier founded by these organizations was spectacular. Similar schools were organized in Switzerland, Belgium and Italy. Élisa Lemmonier's pedagogical formula, a division of the courses into two main groups—general instruction including French language and arithmetic and special instruction including commercial courses, bookkeeping, elements of law and foreign languages—became the basis of a French educational statute of 1880, since applied successfully by the city of Paris.

MAXIME LEROY

Important works: *Les États-Unis d'Europe* (Paris 1872); *Commentaire sur les principales polices d'assurance maritime usitées en France*, 2 vols. (Paris 1843); *Élisa Lemonnier* (Saint-Germain 1866); "Essai sur les oeuvres et la doctrine de Saint-Simon" in Saint-Simon, C. H., *Oeuvres choisies*, 3 vols. (Brussels 1859) vol. i, p. v–cv.

LENIN, NIKOLAI I. *See* ULYANOV, VLADIMIR ILYICH.

LEO III (The Isaurian) (*c.* 680–741), ruler of the Eastern Empire. Leo is scarcely known outside the writings of his enemies. An Asiatic born at Germanicia (Mar 'ash), probably in a heretic environment hostile to the worship of icons, he emigrated to Thrace. Justinian II favored him and Anastasius II made him general of Anatolia. Leo refused to recognize the usurper Theodosius and was proclaimed emperor by his army; he

entered Constantinople March 25, 717. His successful defense of the city against the Saracens in 717–18 was the first rebuff to the Arabs in the east and has the same historic importance as the battle of Poitiers in the west.

After putting down military revolts, checking conspiracies and transporting Anatolian populations to Europe he proclaimed a new legal code, the *Ecloga* (published in 740 and drawn up in its present form in the ninth century), which is in principle an abstract of the Justinian code but completed and amended on many points. It raised the status of women, ameliorated tribunals and tempered the laws against heretics. Leo's agricultural law protected free peasants against encroachments of large estates. Other edicts attacked Jews and Montanists. In 726 Leo proscribed image worship, and his order to demolish the statue of Christ surmounting the gate of the sacred palace aroused a bloody disturbance. Greece and Italy refused to pay taxes, and Pope Gregory II protested. Leo retaliated by confiscating the papal patrimonies, depriving the pope of jurisdiction over southern Italy and Illyricum and doubling the tribute. John of Damascus, a Jerusalem monk, attacked Leo in three discourses and Gregory II proclaimed the legitimacy of image worship. On his death Leo left the empire in good external condition but with civil war imminent.

LOUIS BRÉHIER

Consult: Diehl, Charles, "Leo III and the Isaurian Dynasty" in *Cambridge Medieval History*, 6 vols. (Cambridge, Eng. 1911–29) vol. i, ch. i; Schwarzlose, Karl, *Der Bilderstreit* (Gotha 1890); Schenk, Karl, *Kaiser Leo III* (Halle 1880), and "Kaiser Leons III. Walten im Innern" in *Byzantinische Zeitschrift*, vol. v (1896) 257–301; Bréhier, Louis, *La querelle des images (VIIIe–IXe siècle)* (Paris 1905); Ostrogorsky, Georg, *Studien zur Geschichte des byzantinischen Bilderstreites*, Historische Untersuchungen, vol. v (Breslau 1929); Albertoni, Aldo, *Per una esposizione del diritto bizantino* (Imola 1927) p. 48–53, 119–21, with bibliography; Pantchenko, B. A., *Krest Yanskaya sobstvennost v Vizantii*, Russky Archaeologichesky Institut, Constantinople, Izvestiya, vol. ix (Sofia 1904); Rein, Eduard, "Kaiser Leon III und die ökumenische Akademie zu Konstantinopel" in Suomalainen Tiedeakatemian, *Toimituksia*, ser. B., vol. xi (1919) 1–43; *A Manual of Roman Law: the Ecloga*, tr. by E. H. Freshfield (Cambridge, Eng. 1926); *A Revised Manual of Roman Law, Founded upon the Ecloga*, tr. by E. H. Freshfield (Cambridge, Eng. 1927).

LEO XIII (1810–1903), pope from 1878. Leo XIII, born Gioacchino Pecci, received his education at the Jesuit school of Viterbo and the Collegio Romano and at the Accademia dei Nobili in Rome. From 1843 to 1846 he was papal nuncio to Brussels and from 1846 to 1878 archbishop of Perugia. In 1853 he was named cardinal by Pius IX and in 1878 he was elected pope.

The great historical importance of Leo XIII rests on his formulation of the Catholic attitude toward modern social and political problems and his influence on the development of the social Catholic movements. His views on these questions are found in his encyclicals *Quod apostolici muneris* (1878, tr. as *Socialism, Communism, Nihilism*); *Arcanum divinae* (1880, tr. as *Christian Marriage*); *Libertas praestantissimum* (1888, tr. as *Human Liberty*); *Sapientiae christianae* (1890, tr. as *The Chief Duties of Christians as Citizens*); *Au milieu des sollicitudes* (1892, tr. as *Allegiance to the Republic*); *Graves de communi* (1901, tr. as *Christian Democracy*); and more especially in *Immortale Dei* (1885, tr. as *Christian Constitution of States*) and *Rerum novarum* (1891, tr. as *On the Condition of the Working Classes*). Leo derived his inspiration for these doctrines chiefly from a profound study of the writings of Thomas Aquinas. He emphasized the importance of Aquinas in his encyclical *Aeterni patris* (1879, tr. as *The Study of Scholastic Philosophy*) and in this way contributed greatly to the development of the neo-Thomist movement. In his political philosophy he adhered to the organismic view of the state, considering the state necessary for human welfare and declaring its ordinances to have a moral and binding force. The state is supreme and independent in its own province, which is "the civil and political order." Its end, however, should be the promotion of the general welfare, which includes concern for the material well being of the population as well as mere civil and political rights. The form of government of a state is the result of purely human and historic conditions, hence any form is legitimate provided it insures this general welfare. Very significant too was Leo's urging of all Catholics to take an active part in political affairs in order to aid in the realization of these principles.

Leo's social doctrines had a powerful effect in giving official sanction to the emerging social Catholic movements and in spurring them on to further development. His *Rerum novarum*, which was issued in response to the need for authoritative guidance in the application of Catholic principles to industrial relations, was the most comprehensive statement in that field until it was reaffirmed, reapplied and supplemented by the encyclical of Pius XI *Quadragesimo anno*

(1931, tr. as *On Reconstructing the Social Order*). The church, Leo maintained, has a right to pass judgment upon economic actions and relations, inasmuch as they are subject to the moral law. Private ownership even of capital is sanctioned by natural law and is necessary for human welfare, but it should be widely and more equitably distributed so that "the gulf between vast wealth and sheer poverty will be bridged over." A free contract is not always a just contract in the matter of wages, for the worker has a moral right to compensation which will at least be sufficient for a decent livelihood; laborers have a natural right to enter into and maintain unions which will enable "each individual member to better his condition to the utmost in body, mind and property"; and the state is obliged to intervene for the protection of the working classes as well as for "the general interest" whenever adequate protection cannot be otherwise provided.

JOHN A. RYAN

Works: *Leonis XIII. Pontificis maximi acta*, 23 vols. (Rome 1881–1905); *The Great Encyclical Letters of Pope Leo XIII*, ed. by J. J. Wynne (New York 1903).

Consult: T'Serclaes de Wommerson, Charles de, *Le pape Léon XIII: sa vie, son action religieuse, politique et sociale*, 3 vols. (Paris 1894–1906), partially tr. by M. F. Egan (Chicago 1903); McCarthy, Justin, *Pope Leo XIII* (2nd ed. New York 1899); Goetz, Walter, "Papst Leo XIII" in *Meister der Politik*, ed. by Erich Marcks and K. A. von Müller, 3 vols. (Stuttgart 1922–23) vol. iii, p. 461–83; Germiny, Charles de, *La politique de Léon XIII* (2nd ed. Paris 1902); Goetz, L. K., *Leo XIII, seine Weltanschauung und seine Wirksamkeit* (Gotha 1899); Schilling, Otto, *Die Staats- und Soziallehre des Papstes Leo XIII* (Cologne 1925); Tischleder, Peter, *Die Staatslehre Leos XIII* (M.-Gladbach 1925).

LEO, HEINRICH (1799–1878), German historian and publicist. In politics Leo always stood between the older clerical conservatism of his friend Ludwig von Gerlach, whose intrinsic culture, however, he lacked, and the newer militaristic conservatism, although he was unaware of the needs of a diplomacy conscious of its political responsibility. While a student and member of the *Burschenschaft* he was a radical democrat but was pushed to the right by the revolutions of 1830 and 1848 and became a typical reactionary. The son of a clergyman, he now discovered his own orthodoxy, which as the intellectual form of antirevolutionism assumed a correspondingly militant cast. He also discovered that he was still really rooted in the old tradition and, in opposition to the capitalistic groups of "manufacturers and Jews" growing up with the economic revolution, felt impelled as the representative of the intellectual upper class of the middle bourgeoisie to defend the landowning estates, the military caste and the clergy, which were also threatened by plutocratic development. He became an advocate of the old order based on estates and an opponent of the emerging society based on class divisions, thus following the pattern typical of the first stage of industrialism, in which conservative opinion opposing the new order sympathizes with the oppressed proletariat. He regarded the liberal ideology of freedom as merely a disguise for the economic drive toward supremacy; in the idea of pacifistic humanitarianism he saw only a leveling sentimentality under cloak of which gross materialism and intellectualistic rationalism could flourish. To these tendencies Leo opposed his ideal of the old order of estates, resting on simplicity, strength and good breeding, organized patriarchally and imbued with the attitude toward life of the "God fearing hired soldier," for whom war signifies "life" in its proper or dramatic sense. Leo's writing of history is both antihumanitarian and antihumanistic, a genuine example of bourgeois learning become reactionary. It detests all periods beloved by liberal culture—classical antiquity as well as the period from the Reformation and the Enlightenment to the French Revolution—and extols the Middle Ages, the Restoration and finally the era of Bismarck with its triumph of national militarism. Thus Leo held a concept of history which reconciled the conservative point of view of the old order of estates with that of the new Prussian nationalism.

ALFRED VON MARTIN

Important works: *Geschichte der italienischen Staaten*, 5 vols. (Hamburg 1829–37); *Studien und Skizzen zu einer Naturlehre des Staates* (Halle 1833); *Zwölf Bücher niederlandischer Geschichten*, 2 vols. (Halle 1832–35); *Die Hegelingen* (Halle 1838, 2nd ed. 1839); *Leitfaden für den Unterricht in der Universalgeschichte*, 4 vols. (Halle 1838–40); *Lehrbuch der Universalgeschichte*, 4 vols. (Halle 1835–38; 3rd ed. in 6 vols., 1849–56); *Vorlesungen über die Geschichte des deutschen Volkes und Reiches*, 5 vols. (Halle 1854–67).

Consult: Krägelin, Paul, *Heinrich Leo*, Beiträge zur Kultur- und Universalgeschichte, vol. vii (Leipsic 1908); Bonwetsch, N., "Der Historiker Heinrich Leo in seinen Briefen an Hengstenberg" in Königliche Gesellschaft der Wissenschaften zu Göttingen, Philologisch-historische Klasse, *Nachrichten* (1917) 349–98; Below, G. von, "Heinrich Leo" in *Deutsche Vierteljahrsschrift fur Literaturwissenschaft und Geistesgeschichte*, vol. ii (1924) 533–55, and *Die deutsche Geschichtschreibung von den Befreiungskriegen bis zu unseren Tagen* (Munich 1924); Masur, G., "Heinrich Leo" in *Mitteldeutsche Lebensbilder*, vol. iii (1928) 392–413.

LEONHARD, RUDOLF KARL GEORG (1851–1921), German jurist. Leonhard was successively professor at Göttingen, Halle, Marburg and Breslau. He was important in connection with the problems of interpretation arising from the new German civil code which went into effect in 1900. Imbued with the spirit of Jhering, whose colleague he had been for four years at Göttingen, he had already shown his awareness of modern needs in his treatment of the Pandects. In his *Der allgemeine Teil des bürgerlichen Gesetzbuchs* (Berlin 1900) he now sought on the one hand to orient the general part of the code in its historical background and on the other to give effect to the purposes of its creation. The abstract character of the general part made this an especially difficult task. An early work of Leonhard's, *Der Irrtum bei nichtigen Verträgen nach römischem Recht* (2 vols., Berlin 1882–83), achieved a new and fundamental importance in a revised edition under the title *Der Irrtum als Ursache nichtiger Verträge* (published in the Studien zur Erläuterung des bürgerlichen Rechts, vols. xxii–xxiii, Breslau 1907), a series which Leonhard edited after 1900. In this work Leonhard attacked one of the leading problems of interpretation under the code, the problem of the making of a valid contract. He came to the conclusion that the code provisions relating to the effect of mistake upon a declaratory act did not control the general problem of consent. He counseled the abandonment of the theory of declaration, because its correct elements follow directly from a true interpretation of the theory of intent. Leonhard achieved an international reputation. In 1907–08 he lectured at Columbia University and in 1912 published a German translation of Holmes' *The Common Law*. As an internationally minded jurist he always fought against the tendency to exaggerate nationalistic attitudes in the law.

ALFRED MANIGK

Consult: Manigk, Alfred, in *Deutsches biographisches Jahrbuch*, vol. iii (Berlin 1927) p. 180–83.

LEONTOVICH, FEDOR IVANOVICH (1833–1910), historian of Russian law. Leontovich occupied the chair of history of Russian law at the University of Odessa and later at the University of Warsaw. His researches were mainly concerned with the legal institutions of the Kiev period in early Russian history and with the history of those provinces of southern and western Russia which during the fourteenth, fifteenth and sixteenth centuries came into the fold of the Lithuanian principality. His investigation of early Russian history led him to the conclusion, shared by later Russian historians, that the basic political and social life of the Russian peoples of the early period revolved around communes resembling those which flourished among the Balkan Slavs under the name of zadrugi. He denied emphatically the existence of a national consciousness which would in this early period have provided a basis for the political union of the various branches of the Russian Slavs; this view, however, remained unaccepted in Russian historical literature. In the course of researches devoted to the evolution of Lithuanian Russian law Leontovich reconstructed the history of those early Russian countries which were incorporated in the Lithuanian principality after the Tartar invasion; he established the common origin of their social structure and emphasized the changes brought about by Polish influence in Lithuania. Although his theories were attacked by many later historians, his works have not lost their importance, chiefly because of the wealth of data collected.

V. MIAKOTIN

Important works: *Krestyane ugo-zapadnoy Rossii po litovskomu pravu XV i XVI vekov* (The peasants of southwestern Russia under the Lithuanian law in the fifteenth and sixteenth centuries) (Kiev 1863); "Russkaya Pravda i Litovsky Statut" (Russian law and the Lithuanian Statute) in *Kievskiya universitetskiya izvestiya*, nos. 2–4 (1865); *Istoriya russkago prava* (The history of Russian law) (Odessa 1869); *Ochevki istoru litovsko-russkago prava* (Outline of the history of Lithuanian Russian law) (St. Petersburg 1894); "Natsionalny vopros v drevney Rossii" (The national problem in early Russia) in *Varshavskiya universitetskiya izvestiya*, no. 9 (1894), and no. 1 (1895).

LEONTYEV, KONSTANTIN NIKOLAYEVICH (1831–91), Russian philosopher and journalist. Leontyev began life as a physician, taking part in the Crimean War and later going into private practise. During this period he wrote several novels, which developed the theme of free love made popular at the time by George Sand. In 1863 he entered the consular service in the Near East but resigned in 1871 to embrace religion as a monk. To these years belong a number of novels and short stories offering a realistic and skilfully drawn picture of the life of the Christian population under Turkish rule. Having failed of admission to the monastery on Mount Athos, he reentered the foreign service for two short periods, acted as assistant editor of the government newspaper *Varshavsky dnevnik*

(Warsaw chronicle) and worked as censor in Moscow before retiring to a monastery in Russia in 1887. In the last decade of his life he earned a certain notoriety as the apologist of extreme reaction and an advocate of "the voluptuous cult of corporal punishment."

Leontyev's originality as a religious and political thinker was recognized only after his death. He regarded fear as the beginning of all wisdom and love as only its fruit; therefore, not unlike Nietzsche, he contemptuously dismissed ethics and called for the assertion of force. He saw no warrant in the Gospels for the belief that mundane existence will ever cease to be dominated by evil and emphasized the ascetic elements of Christianity and the hierarchic aspects of church organization. He found the meaning of history in the development of a small élite for mystical purposes. In the course of their historical evolution peoples pass from the stage of youthful simplicity to that of fully developed complexity, when society is divided into fixed classes and life is stable and aesthetically satisfying; such complex societies must be ruled by force—an authoritarian clerical hierarchy and an autocratic centralized monarchy. The last stage of national existence, which he identified with the ugliness and philistinism of an egalitarian-democratic civilization, is that of artificial simplicity resulting from decay. He believed that Russia might be saved from this fate and acquire a historical mission if its natural evolution were arrested and the Byzantine elements of Russian culture—autocracy and the Greek church—as well as the indigenous village community were preserved and strengthened. Leontyev believed in Byzantinism rather than Slavophilism or Panslavism. He desired the annexation of Constantinople by Russia to provide the basis for an integral cultural development and looked askance upon the nationalist democratic aspirations of the southern Slavs.

I. V. DIONEO-SHKLOVSKY

Works: Collected works, ed. by I. Fudel, 9 vols. (Moscow 1912–13).

Consult: *Pamyati K. N. Leontyeva* (Memorial volume for K. N. Leontyev) (St. Petersburg 1911) containing a bibliography; Berdyaev, N. A., *Konstantin Leontyev* (in Russian) (Paris 1926), with a selected bibliography; Masaryk, T. G., *Zur russischen Geschichts- und Religionsphilosophie*, 2 vols. (Jena 1913), tr. by E. and C. Paul as *The Spirit of Russia*, 2 vols. (London 1919) vol. ii, ch. xvi; Miliukov, P. N., *Iz istorii russkoy intellegentsii* (2nd ed. St. Petersburg 1903), tr. by J. W. Bienstock as *Le mouvement intellectuel russe* (Paris 1918) ch. viii.

LEOPOLD II (1835–1909), Belgian king. Leopold, who came to the throne in 1865, is important chiefly for his leadership in opening up Africa to European imperialism after Stanley's explorations. In 1885 an international association headed by Leopold and largely financed by Belgian capital was formed at the Congress of Berlin to settle the Congo. It claimed to be actuated by humanitarian ideals, but its imperialistic drive was soon obvious. The independent Congo state fell increasingly under Belgian domination and in 1907 Leopold annexed it. Leopold's Congo policy, a clear breach of the Berlin contract, was a classic demonstration of the aims and methods of modern imperialism, which regards a colony as an opportunity for exploitation. Native labor was made compulsory, native social and political organization was deliberately smashed and the natives were converted into impersonal tools of production. As the governor general said in 1906, the state was to be left "face to face with a population freed of all social liens and without any attachment to the soil." Leopold, holding that these were no deplorable concessions to circumstances but necessary steps in imperialist policy, struggled against the reform campaign led by E. D. Morel. His policy brought him a large fortune as long as raw wealth lay ready for the taking. But when elementary industrialization became necessary, exploitation and subjugation by concessionaire companies, troops and black mercenaries proved an inefficient system of production. Leopold, having no further suggestions to offer, continued, however, to advocate the old policy. He made no enduring contribution to the theory of colonization.

STEPHEN H. ROBERTS

Consult: Rappoport, Angelo S., *Leopold the Second* (London 1910); *Léopold II et Beernaert d'après leur correspondance inédite de 1884 à 1894*, ed. by Édouard van der Smissen, 2 vols. (Brussels 1920); Elst, Baron van der, "Léopold II et la Chine" in *Revue générale*, vol. cxi (1924) 410–37, 570–97; Zimmermann, Emil, "Leopold der Zweite von Belgien als erster Vorkämpfer Mitteleuropas" in *Grenzboten*, vol. lxxv, pt. ii (1916) 393–404; Ridder, A. de, *Le mariage du roi Léopold II* (Brussels 1925); Kerken, Georges van der, *Les sociétés cantones du Congo belge et les problèmes de la politique indigène* (Brussels 1920); Congrès Colonial National, 1920, *Compte rendu des séances* (Brussels 1921), and Congrès Colonial Belge, 1926, *Comptes rendus et rapports* (Brussels 1926).

LE PLAY, PIERRE GUILLAUME FRÉDÉRIC (1806–82), French social reformer. From 1829 to 1853 during his travels as an engineer Le Play studied the technical progress, the eco-

nomic prosperity and the status of labor in all European countries. In 1848 he gave up his professorship of metallurgy in the École des Mines and henceforth devoted himself chiefly to propounding his theory of social reform. His first important work, *Ouvriers européens* (Paris 1855; 2nd ed., 6 vols., Tours 1877–79), was a collection of monographs on the material and moral life of thirty-six families. After the appearance of this book he founded the Société d'Économie Sociale for the propagation of his ideas. At the suggestion of Napoleon III he published an extract from *Ouvriers européens* under the title *Réforme sociale en France* (2 vols., Paris 1864; 7th ed., 3 vols., 1887) containing observations on religion, property, family, association, private enterprise and government, which won for him great success in government and academic circles. This was followed by *L'organisation de la famille* (Paris 1871, 3rd ed. Tours 1884); *La constitution de l'Angleterre* (2 vols., Tours 1875), in which English education and legislation were portrayed as ideal; *Réformes en Europe et le salut en France* (Tours 1876); and finally in 1881 as a synthesis of his ideas the *Constitution essentielle de l'humanité* (Tours 1881, 2nd ed. 1893). He founded local and autonomous groups for the propagation of his views and won many adherents, among whom were A. J. Focillon, Charles de Ribbe, Claudio Jannet and Desmolins. The review *Réforme sociale* was established in 1881 to carry on his work.

Le Play was a pioneer in establishing the methodology of the social survey and in studying family budgets for the purpose of determining standards of living; his work in this field has had international influence. In opposition to the parties and doctrines which sprang from the French Revolution he set forth the principles of Christian morality, duty and obedience to authority as the bases of a sound economic and social organization. He maintained that wherever traditional Christian morals had remained in force social tranquillity and economic well being reigned; he found confirmation for this idea not only in Russia and England but in the history of his own small native province of Normandy. He regarded private property, as opposed to purely ideal common ownership, as the foundation of the modern state and therefore advocated a free law of inheritance, as opposed to the restriction which since the covenant of 1793 prescribed in France equal division of property among the children. This law designed to protect democratic institutions against the nobility had led to parceling of land, a development which he believed imperiled the family as well as economy. He held the patriarchal family, which he wished to restore, to be the basis of morality and social organization, especially among the lower classes, and denounced birth control. He opposed governmental regulation to solve labor problems arising from the effects of the industrial revolution and the collapse of the guilds and advocated instead the cooperation of employers and workers for the purposes of safeguarding the religion, property and family of the working population. The emancipation of the oppressed he held to be the task of the upper classes, who owed their workmen more than mere wages. He contended that the superiority of the English administration rested on self-government, esprit de corps and family spirit, while in France the omnipotent bureaucracy destroyed local and provincial independence. Democracy to him was natural for the community; aristocracy—representation by people of rank—for the province; and monarchy with the support of parliament for the entire state.

GOTTFRIED SALOMON

Consult: Auburtin, F., *Frédéric Le Play d'après lui-même* (Paris 1906); Baunard, Louis, *Frédéric Le Play, la foi et ses victoires*, 2 vols. (vol. i 6th ed., vol. ii 4th ed. Paris 1893) vol. ii; Boutmy, E. M., "Le Play et la réforme sociale" in *Revue nationale*, vol. xxi (1865) 389–424; Sainte-Beuve, C. A., *Nouveaux lundis*, 13 vols. (2nd-5th eds. Paris 1872–81) vol. ix, p. 161–201; Ribbe, Charles de, *Le Play d'après sa correspondance* (2nd ed. Paris 1906); Curzon, E. de, *Frédéric Le Play, sa méthode, sa doctrine, son oeuvre, son esprit* (Paris 1899); Vignes, J. B., *La science sociale d'après les principes de Le Play et de ses continuateurs*, 2 vols. (Paris 1897); Gide, C., and Rist, C., *Histoire de doctrines économiques depuis les physiocrates jusqu'à nos jours* (5th ed. Paris 1926), tr. from 2nd French ed. by R. Richards (London 1915) p. 486–95.

LEPSIUS, KARL RICHARD (1810–84), German Egyptologist. Lepsius studied archaeology with Otfried Müller and philology with Bopp and Böckh, receiving his doctor's degree in 1833, a year after the death of Champollion. He had already attracted the attention of his university teachers when he was invited by C. K. J. Bunsen, the first director of the newly founded German archaeological institute in Rome, to undertake studies in the Italic dialects and more especially in the monuments of the newly deciphered Egyptian. In France there were at that time no successors of Champollion fully equal to the task of carrying on the noble tradition he had established. In Italy Salvolini and Rosellini were

of decidedly inferior capacities, and in Germany the science of Egyptology had not even begun. It fell to the lot of Lepsius therefore not only to found the new science of Egyptology in Germany but also very largely to secure for Egyptology full recognition as a science and to save it from the hands of the dilettante. By 1838 he had made himself master of the then available body of knowledge which formed the earliest stage of the youthful science. His first Egyptological publication was a letter written in 1837 to Rosellini on the hieroglyphic alphabet, and his first more substantial work was a folio published in 1842 containing a selection of the chief hieroglyphic monuments of Egypt for the use of students. This was quickly followed by the first modern edition (Leipsic 1842) of the Egyptian *Book of the Dead*, based upon an unfortunately late papyrus, which Lepsius found in the collections at Turin.

From the beginning Lepsius' keen and enthusiastic mind had discerned the necessity for fundamental work in the new science in Egypt itself. At the instigation of Bunsen and Alexander von Humboldt, Frederick William IV of Prussia dispatched Lepsius to Egypt on a scientific mission among the monuments of the Nile. Lepsius' conception of what he ought to accomplish on this journey had grown steadily, until his plans had passed far beyond the mere mission of a single handed scholar and provided for a well manned expedition, in personnel and experience without question the most efficient group which up to that time had ever worked in the Orient. It included architects, draftsmen, painters and even plaster molders to make casts of the original monuments. Lepsius began his work in Egypt in September, 1842, and finished in October, 1845; its results were published in his *Denkmäler aus Aegypten und Aethiopien* (12 vols., Berlin 1849–59). These volumes revolutionized the situation of Egyptological science and for the first time placed in the hands of scholars a body of original sources reflecting the entire civilized development on the Nile for a period of over three thousand years—from about 3000 B.C. down into the Christian era. For the first time the Old Kingdom (about 2980–2475 B.C.), mirrored in its records, which Lepsius had found especially in the great cemeteries of Gizeh and Sakkara, was revealed to the modern world. Of the Middle Kingdom (*c.* 2160–1788 B.C.) likewise the sources presented by these folios were for the first time adequately representative. The work of Lepsius thus added a new and earlier period of human development to modern knowledge; that is, an earlier thousand years of human history than had been known before. On the other hand, the classic tradition inherited from Greek historians that Ethiopia had been the oldest source of civilization on the Nile was completely and finally demolished by his discoveries.

Lepsius was primarily an archaeologist, venturing only sparingly and very cautiously into the field of philological research. He translated very few Egyptian monuments and has left almost no such translations among his works. Nevertheless, his work included a wide range of investigations: from his *Die Chronologie der Aegypter* (Berlin 1849) and his epoch making *Königsbuch der alten Ägypter* (2 vols., Berlin 1858) to his phonetic studies in the East undertaken to produce an alphabet for universal use in transliterations, his masterly study and classification of the African languages covering the whole continent and his last scientific production, a grammar of the Nubian languages.

Shortly after his return from his great expedition the first chair in the new science in Germany was established at Berlin. In August, 1846, Lepsius was appointed the first professor of Egyptology in a German university, and four years later he was elected a member of the Königliche Akademie der Wissenschaften in Berlin. In 1855 in a new building planned by himself he installed the famous Egyptian Museum at Berlin, of which he became the first director. Thus by his own brilliant achievements and through his three influential positions Lepsius gave to Berlin its commanding position in Egyptological science, a leadership which two generations of his successors there have worthily maintained.

JAMES HENRY BREASTED

Consult: Dillmann, C. F., "Gedächtnissrede auf Karl Richard Lepsius" in Königliche Akademie der Wissenschaften, Berlin, *Abhandlungen*, 1885 (Berlin 1886) p. 1–25; Ebers, Georg, *Richard Lepsius* (Leipsic 1885), tr. by Zoe Dana Underhill (New York 1887), with bibliography of Lepsius' works p. 325–47.

LEROUX, PIERRE (1797–1871), French social philosopher. Very much influenced by Condorcet and by the religious currents of his time, Leroux was one of the most important disciples of Saint-Simon. With Dubois he founded the *Globe*, which became the organ of the Saint-Simonians after 1830. After this he founded the *Revue encyclopédique*; later with J. Reynaud he established the *Encyclopédie nouvelle* and with

George Sand the *Revue indépendante*, two other Saint-Simonian publications which constitute one of the fruitful sources of French socialist ideology.

He was a vigorous critic of modern society, in which "the millionaires and the capitalists are the nobles of our time"; of the democratic political regime, subjected to the "despotism of the majorities"; of the wage system, which allotted to the workers less than half of the revenue produced by their labor; of the Catholic religion; of the family; of property. A feminist and "revolutionary pacifist," he sought to reconcile labor with property, religion with philosophy. It was upon the republican motto, Liberty, equality, fraternity, that he based his system, which may be defined as a progressive and religious democracy. "We gravitate toward God," he wrote.

Leroux saw that man is a social product; he may thus be considered with Bonald and Saint-Simon as one of the precursors of modern sociology. Far from wishing to absorb man into society, however, he sought to individualize him —all men are equal, but they are also jointly responsible. He demanded "a complete society in which the individual may be free." In his appeal "Aux politiques" (in *Situation actuelle de la société*, Boussac 1847) he wrote that the role of society "is to give to all its members, to each according to his needs, his capacity and his works, the enjoyment of the product of the common labor, whether such labor be an idea, a work of art or material property."

All men, he held, must work and fulfil a function; hence they should be called functionaries. They will elect an assembly which will be divided into three subgroups—judicial, legislative and executive—which will appoint the national administration.

Leroux claimed and is generally accorded the honor of having been the first to use the term socialist about 1833; actually the term is already to be found in an Owenite publication of the year 1827. Leroux was, however, the first to analyze the concept (in an article "De l'individualisme et du socialisme" in *Revue encyclopédique* for 1834). He is also to be credited with having given the word solidarity, previously current only in legal usage, its present ethical meaning.

MAXIME LEROY

Important works: *Refutation de l'éclectisme* (Paris 1839, new ed. 1841); *De l'humanité*, 2 vols. (Paris 1840); *D'une religion nationale* (Boussac 1846); *Du christianisme et de son origine démocratique* (Paris 1848); *De l'égalité* (Boussac 1838, new ed. 1848); *La grève de Samarez* (Paris 1863); *Job* (Paris 1866).

Consult: Pioger, Julien, *Pierre Leroux socialiste* (Paris 1896); Raillard, Célestin, *Pierre Leroux et ses oeuvres* (Châteauroux 1899); Thomas, P. Félix, *Pierre Leroux, sa vie, son oeuvre, sa doctrine* (Paris 1904); Mirecourt, Eugène de, *Pierre Leroux* (Paris 1856); Janet, Paul, "La philosophie de Pierre Leroux" in *Revue des deux mondes*, vol. cli (1899) 767–88, and vol. clii (1899) 379–406; Fidao-Justiniani, J.-E., *Pierre Leroux* (Paris 1912).

LEROY-BEAULIEU, PAUL (1843–1916), French economist. After studying law in Paris Leroy-Beaulieu traveled in England and then went to Bonn and Berlin for further study. He made his début as a writer in 1867 with the prize essay on *L'état moral et intellectuel des classes ouvrières et de son influence sur le taux des salaires* (Paris 1868) and at the age of twenty-seven won four prizes offered by the Institut. From 1869 he collaborated on the *Revue des deux mondes* and in 1871 became an editor of the *Journal des débats*. When Boutmy formed the École Libre des Sciences Politiques in 1872 Leroy-Beaulieu accepted the chair of public finance. In 1873 he founded *Économiste français* and became its editor, missing only one weekly article until his death. In 1880 he succeeded Chevalier as professor of political economy at the Collège de France.

Leroy-Beaulieu was one of the outstanding representatives of economic liberalism in France. His views, formulated in a number of works and elaborated in the *Traité théorique et pratique d'économie politique* (4 vols., Paris 1895; 5th ed., 5 vols., 1910), followed essentially the principles of classical economics. He rejected, however, the pessimistic conclusions of the latter and in the *Essai sur la répartition des richesses* (Paris 1881, 4th ed. 1897) argued that the Ricardian law of rent had no present application and that the subsistence theory of wages and its derivative, the iron law of wages, existed only in the imagination of their authors. In his value theory he followed the marginal analysis of the Austrians. His chief work, the *Traité de la science des finances* (2 vols., Paris 1877; 8th ed. 1912), was for a long time the leading treatise on fiscal science. The popularity of the first volume, dealing with public revenues, was subsequently impaired by the failure to emphasize the social aspects; the second volume, devoted to public credit, retains its importance to the present day. Although he was an outspoken opponent of state intervention Leroy-Beaulieu pleaded in his works on colonization and on population prob-

lems for positive state action in promoting colonial expansion and in encouraging a higher birth rate by offering financial rewards to large families. Among his many other works the more important deal with the labor question, the modern state and collectivism.

Leroy-Beaulieu played a prominent part in the economic life of France; an owner of large tracts of land at home and in the colonies and a successful farmer, he took a keen interest in agriculture and frequently acted in an advisory and executive capacity for many industrial and financial organizations. His lack of sympathy with the social currents of the day prevented him from succeeding in several attempts to enter the parliament. Leroy-Beaulieu will live as an economic journalist without peer and as an economist of remarkable brilliance and clarity rather than of depth.

EDWIN R. A. SELIGMAN

Consult: Pirou, Gaëtan, *Les doctrines économiques en France depuis 1870* (Paris 1925) p. 116–26; Stourm, René, in *Revue des deux mondes*, ser. vi, vol. xxxviii (1917) 532–53; Payen, Édouard, in *Journal des débats*, vol. xxiii, pt. ii (1916) 953–55, reprinted in *Économiste français*, vol. xliv, pt. ii (1916) 805–07; Eichthal, Eugène d', in *Revue des sciences politiques*, vol. xxxvii (1917) 1–7; Waha, Raymond de, *Die Nationalökonomie in Frankreich* (Stuttgart 1910) p. 103–17; Jannacone, P., *Paolo Leroy-Beaulieu, Alfredo Marshall, Gustavo Schmoller e i loro trattati di economia politica* (Turin 1905) p. 5–24.

LESE MAJESTY. The crime of lese majesty has followed a practically uniform evolution in the law of all nations. In Roman law, where its course of development was initiated, the term *crimen majestatis populi romani imminutae* was first used principally to denote an offense against the fundamental laws of the plebs. Later the term covered in general any infringement upon the dignity of the Roman people. The sources do not permit a precise definition of the content of this political crime in Roman law; it is easier to point negatively to what Mommsen called its "juridic boundlessness." With the downfall of the Roman Republic this boundlessness became very evident, for the person of the emperor tended to become the object of the *crimen laesae majestatis*. The offense, which formerly had involved a violation of the basic rights of the plebs, grew into a crime against the absolute ruler (see Institutes, 4, 18, 3, *Lex Julia Majestatis, quae in eos, qui contra imperatorem vel rem publicam aliquid moliti sunt, suum vigorem extendit*).

The peculiarities of lese majesty, traces of which are still evident in German law and in the law of other countries, arose during this period of development. A characteristic feature of the Germanic law is that in the criminal punishment of offenses against the commonwealth emphasis is laid upon the idea that the citizen or subject who endangers the commonwealth's safety violates the loyalty he owes to his people and to his sovereign: the political criminal is a traitor and the crime against the state is in its nature treason. The terms *Hochverrat* and *Landesverrat* in German law and high treason or treason in Anglo-American law still express this concept. A more precise delimitation of the various criminal aspects in the *crimen laesae majestatis* of Roman law and the exact definition of lese majesty in modern law evolved very slowly, and it may be said that this evolution is still far from complete. The treatment of the material in the legislation and jurisprudence of other countries has not gone much further than in those of Germany and has in fact remained behind the latter in many respects.

The juridic aspects of the crime of lese majesty can be elucidated through an examination of the German law. The crime, which was abolished by the German constitution of 1919, was formerly covered by paragraphs 94 to 97, "Libeling the Sovereign," and paragraphs 98 to 101, "Libeling Ruling Princes of Confederate States" in the German penal code of 1871. The distinction between libeling the sovereign ruler and libeling one of the princes of the confederate states was made because of the structure of the German Empire of 1871, according to which the empire had the kaiser at its head and the several states retained their own sovereignty under kings or ruling princes.

In Roman law lese majesty came under the head of high treason, whereas the German penal code (*Strafgesetzbuch*) differentiated between the two, with the intention of providing a milder penalty for less serious attacks upon the ruler's person. Aside from these considerations of juridic policy the dogmatic system of the German penal code drew a sharp line between the two offenses. Considered systematically high treason (*Strafgesetzbuch*, para. 80–87) was an attack upon the inner stability of the nation; such an attack existed when the criminal enterprise aimed to kill the sovereign or to hinder him in the exercise of his right to govern by limiting his freedom of person, by impairing his health or by any other manner of injury. Lese majesty, on the other hand, was any other attack upon the state's sovereign which did not produce a

change in the existing constitutional situation but which was directed against the person of the sovereign without directly affecting the state.

In this limited sense the concept of lese majesty comprises bodily injury as well as any libel of the sovereign or of a ruling prince of one of the federated states. The problem of the relationship of a libel of the sovereign to ordinary libel as covered by paragraph 185 of the German penal code was of importance in the systematic organization of German law. The problem was whether lese majesty was a *delictum sui generis* or an aggravated libel within the meaning of paragraph 185. A priori two types of libel of a sovereign are conceivable: libel of the ruling prince as a sovereign and libel attacking the honor of the prince as a private individual. This distinction is based upon the concept that the object of the libel is the honor of the individual; whether or not an utterance is a libel and what sort of libel it involves depend upon the identity of the person to whom the expression is directed and in what juridic capacity the injured party is affected. In the case of the sovereign in addition to his own person the dignity or reverence due him as the representative of the state may be a special target for disrespectful utterances. Whoever injures this dignity, which is by no means identical with the personal honor of the sovereign, even though one and the same utterance may injure both, injures the dignity of the state. Since lese majesty as a *delictum sui generis* can be directed against the dignity of the ruler only as the exponent of state power, the crime is possible properly only against the sovereign; whereas aggravated libel, which is aimed at the person, may be committed against members of the ruling house as well as the ruler himself.

The German criminal law did not protect the dignity of the sovereign as the representative of the state. In accordance with the principle *nulla poena sine lege* laid down in paragraph 2 of the penal code attacks against the respect due the sovereign could be punished only if they came under the provisions of high treason or if they libeled him as a private individual. There was no lese majesty in the true sense of a *delictum sui generis*; libel of the sovereign was a libel in the ordinary sense, aggravated and punished by special penalties solely because of the eminence of the injured party. In practise of course this general jurisprudential point of view was not always maintained, and because of the actual need for protecting the sovereign judicial opinions often punished injuries to his dignity as injuries to the representative of the state, by extending the interpretation of the provisions of the penal code.

Other offenses covered by the law under the heading "Libel of the Sovereign or of a Ruling Prince of One of the Confederate States" were "acts of violence" directed against the kaiser, sovereign rulers or ruling princes of confederated states as well as against members of a ruling house (*Strafgesetzbuch*, para. 94–101). Acts of violence in the sense of this section of the code included all deliberate attacks directed upon the life, freedom or honor of another, in so far as the attack consisted of actions aimed against the body. Lese majesty thus comprised murder and attempted murder of the kaiser or the ruler of one of the confederated states as well as plots to imprison a ruler or to deliver him over to the enemy (*Strafgesetzbuch*, para. 80 and 81, no. 1), all of which also come under the offense of high treason. Premeditation in the case of lese majesty was identical with that in simple libel, but the offender in the former had also to know that his libelous attack was aimed against a person protected by the special provisions. The memory of deceased sovereigns enjoyed no special protection; offenses against it were covered by paragraph 189 of the penal code.

The severity of the penalty for lese majesty was graduated according to the intensity of the constitutional bond between the party injured and the offender. It varied from life imprisonment at hard labor for acts of violence against the kaiser, the offender's own sovereign or the sovereign of the German state in which he resided to imprisonment or confinement in a fortress for one week or more as the minimum penalty for libeling a member of the ruling house of another German state.

With the abolition of the constitution of 1871 through the revolution of 1918 the paragraphs of the penal code concerning lese majesty have become null and void. Since the establishment of a republic and of the republican form of government in the various states the *Reichspresident* has taken the place of the kaiser, while in the several states the monarch's duties have been taken over by the state governments. Protection of officials representing the state is laid down in the Law for the Protection of the Republic (1930). Paragraph 3 of this law makes provision for the imprisonment of anyone attacking or conspiring to attack the life or body of the *Reichspresident* or of a member of the Reich or state cabinets. Paragraph 5 provides a fine and

imprisonment for anyone publicly slandering the constitutional form of government by insulting or slandering the officials named in paragraph 3 as well as for anyone calumniating or slandering a deceased *Reichspresident* or a deceased member of a cabinet with respect to his public office. Thus the governmental officials as the representatives of the state are afforded special protection in contrast to the lese majesty provisions of the old code. With these new provisions the development of the law concerning offenses against the sovereign turns back in a certain sense to its point of departure, the Roman law. The libel of the president of a republic, however, is not to be regarded as lese majesty in the sense of the modern monarchical concept of the law. The 1927 draft of a German criminal code which is not yet in effect provides in paragraph 101 a corresponding section on public calumny of the republican form of government or of constitutional public bodies.

In other countries the law of lese majesty, likewise based on Roman law, arrived at provisions similar to those of the German law. No essential differences are found between the provisions in Great Britain, Holland and the Scandinavian countries; everywhere lese majesty is a crime. In English law, according to Stephen, "Every one commits a misdemeanor who is guilty of any contempt against the person of His Majesty, or his royal dignity, by means of any contumelious, insulting, or disparaging words, acts, or gestures" (*A Digest of the Criminal Law*, art. 83). But although lese majesty is a crime in England, British legal practise in principle opposes prosecution for it, just as it in general opposes prosecution for political activities. Moreover the monarchy is so firmly rooted in England that direct or indirect attacks upon that institution or upon the monarch himself are rare, and when they do occur public disapproval proves a sufficient punishment.

In systems of jurisprudence based upon an enlightened and firm patriotism penalties for lese majesty in the monarchical state and for similar crimes in republics cannot be dispensed with. The loyalty to the commonwealth so deeply impressed upon the consciousness of all citizens, however, leads to a general disapproval of offenders which becomes a greater and more impressive penalty than any possible sentence.

FRITZ VAN CALKER

See: TREASON; LIBEL AND SLANDER; MILITARY DESERTION.

Consult: Schisas, P. M., *Offences against the State in Roman Law* (London 1926), especially ch. i; Mommsen, T., *Römisches Strafrecht* (Leipsic 1899) bk. v, ch. i; Barsanti, P., "Dei delitti politici in Roma" in *Rivista penale*, vol. xxvi (1887) 5–18; Kuhn, F. J., *Betrachtungen über Majestäten und Majestäts-Beleidigungen der römischen Kaiserzeit* (Munich 1901); Callewaert, C., "Les premiers Chrétiens et l'accusation de lèse-majesté" in *Revue des questions historiques*, vol. lxxvi (1904) 5–28; Sackur, Ernst, "Ein römischer Majestätsprozess und die Kaiserkrönung Karls des Grossen" in *Historische Zeitschrift*, vol. lxxxvii (1901) 385–406; Kellner, O., *Das Majestätsverbrechen im Deutschen Reich bis zur Mitte des 14. Jahrhunderts* (Halle 1911); Borch, Leopold von, *Einfluss des römischen Strafrechts auf Gefolgschaft und Majestätsverletzung in Deutschland* (Vienna 1889); Frederichs, W., *Die Anwendung der allgemeinen Grundsätze uber Beleidigungen speziell auf Majestätsbeleidigungen* (Greifswald 1897); Calker, F. van, "Hochverrat und Landesverrat. Majestätsbeleidigung" in *Vergleichende Darstellung des deutschen und ausländischen Strafrechts, Besonderer Teil*, vol. i (Berlin 1906) p. 1–112, especially p. 1–6, 91–112; Doehn, B., "Der Begriff der Majestätsbeleidigung und ihr Verhältnis zur gewohnlichen Beleidigung nach dem Reichsstrafgesetzbuch" in *Zeitschrift für die gesamte Strafrechtswissenschaft*, vol. xxi (1901) 468–536; Bleeck, S., "Die Majestätsbeleidigung im geltenden deutschen Strafgesetz" in University of Berlin, Kriminalistisches Institut, *Abhandlungen*, n.s., vol. vi (1909) no. i; Brooks, R. C., "Lèse majesté" in *Bookman* (New York), vol. xix (1904) 359–72; Viaud, J., *La peine de mort en matière politique* (Paris 1902) p. 92–103, 108–114; Pella, Vespasien V., "La répression des crimes contre la personnalité de l'état" in Académie de droit international, *Recueil des cours*, vol. xxxiii (1930) 671–868, especially 689–701; Garraud, R., *Traité théorique et pratique du droit pénal français*, vols. i–v (3rd rev. ed. Paris 1913–24) vol. iii, p. 493–505; Stephen, J. F., *History of the Criminal Law of England*, 3 vols. (London 1883) vol. ii, ch. xxiii, and *A Digest of the Criminal Law* (7th ed. by H. and H. L. Stephen, London 1926) ch. vi; Bishop, J. P., *Bishop on Criminal Law*, 2 vols. (9th ed. by J. M. Zane and C. Zollmann, Chicago 1923) vol. i, p. 324–30.

LESLIE, THOMAS EDWARD CLIFFE (1827–82), Irish economist. Leslie graduated from Trinity College, Dublin, in 1847 and studied law in London under Sir Henry Maine. In 1853 he became professor of political economy and jurisprudence in Belfast.

Leslie's attitude toward economics was largely determined by his studies in jurisprudence and by the works of Comte. From Maine he had learned the importance of the historical approach in the social sciences, from Comte their essential unity and interdependence. He thus found himself more in sympathy with the extremists of the German historical school than with the followers of Ricardo. Adam Smith, he held, had derived his generalizations from historical research, thus making economics a con-

crete inductive study. In the hands of Ricardo and his school, however, it had become deductive and abstract. It was based upon two main premises, the desire for wealth and the prevalence of free competition. But the desire for wealth was "an abstraction compounding a great variety of heterogeneous motives," and economists were neglecting their chief function if they failed to analyze these motives and to show their expressions at different times and under different social conditions. Secondly, the assumption of free competition, involving the tendency to equality of wages and of profits, was grossly untrue to facts; and yet upon it depended not merely the cost of production theory of value and the postulate of a "wages fund" but also certain common beliefs about taxation. In particular, it was currently argued that taxes upon commodities must fall upon the consumers and that indirect taxes could not hurt the working classes, since a rise in the cost of living must be compensated by an equivalent rise in wages. Leslie had no difficulty in showing the error of applying these theories without qualification to the circumstances of contemporary life and advocated the abolition of all forms of indirect taxation. His general thesis regarding the uselessness of deductive reasoning in economics was rejected by such critics as Sidgwick and J. N. Keynes, who pointed out that it could not be proved merely by emphasizing the value of historical research or by appealing to the as yet rudimentary science of sociology.

Leslie himself conducted some valuable investigations into the land systems of Europe and into past and contemporary price movements. But he did not live to complete any major work theoretical or historical and his reputation really rests on his methodological essays.

LINDLEY M. FRASER

Important works: *Land Systems and Industrial Economy of Ireland, England and Continental Countries* (London 1870); "Financial Reform," in *Cobden Club Essays, 1871–72*, Second series (London 1872); *Essay in Political and Moral Philosophy* (Dublin 1879).

Consult: Ingram, John K., *A History of Political Economy* (new ed. London 1915) p. 222–25.

LESSING, GOTTHOLD EPHRAIM (1729–81), German dramatist, critic and philosopher. Lessing was born in Saxony and after theological and classical studies in Leipsic and Wittenberg lived as a journalist in Berlin and Leipsic. In 1760 he became secretary to General von Tauentzien in Breslau, in 1767 dramatic critic in Hamburg and in 1770 librarian at Wolfenbüttel in Brunswick.

Lessing has been called by Macaulay the first European critic. Through his literary and dramatic criticism, especially the *Litteraturbriefe* (published in Berlin, 1759–65) and the *Hamburgische Dramaturgie* (2 vols., Hamburg 1767–69), as well as through the aesthetic philosophy of his *Laokoon* (Berlin 1766, new ed. 1788; tr. in *Selected Prose Works*, ed. by Edward Bell, London 1890) he did more than any other individual to liberate German letters from French domination and from the theological and Pietistic influences still present in such writers as Klopstock and Wieland. He attacked the dramatic principles of Gottsched, which were based on French rationalism with its neoclassical ideals of false propriety, and he pointed out the greatness of English literature, especially of Shakespeare. English literature, he maintained, was much closer to the German spirit than the French.

Lessing's plays embodied the freshness and freedom from imposed conventions which he dictated as a critic. In *Miss Sara Sampson* (1755) he achieved the first German bourgeois tragedy. *Minna von Barnhelm* (1767) reflects in the character of Major von Tellheim the idealism of the new bourgeois era in contrast to the deception and recklessness of the earlier order. This moral contrast is predominant in all German literature of the eighteenth century. In Lessing's great tragedy *Emilia Galotti* (1772) the contrast becomes political, court and bourgeoisie standing in hostile opposition as the old and the new. The bourgeoisie recognizes the new virtues of the century as its own and the social unscrupulousness which indulges in cabals and intrigue as belonging to and being caused by the courtly circles. In this play one is already aware of the far off thunder of the coming revolution of the bourgeoisie against the absolutism of the court.

In 1774 Lessing began the publication of excerpts from a work of Hermann Samuel Reimarus which were later collected and republished as *Fragmente des wolfenbüttelschen Ungenannten* (Berlin 1784; tr. by C. Voysey, London 1879). These writings, a fierce deistic attack on revealed religion and on the Bible as an inspired book, aroused a storm of protest against Lessing even from the more liberal theological circles. Lessing although not wholly in sympathy with the views of Reimarus brilliantly defended the right of free inquiry in the problems of religion as opposed to the complacency of institutional posi-

tivism. He never definitely formulated his own religious philosophy, but his ideas on religion, on toleration and on general social and political problems received their fullest elaboration in his last drama, *Nathan der Weise* (1779), probably the noblest achievement of the German Enlightenment, in his *Ernst und Falk* (2 vols., Göttingen and Frankfort 1778–80) and in his *Erziehung des Menschengeschlechts* (Berlin 1780, 2nd ed. 1785; tr. by F. W. Robertson, 4th ed. London 1896). In opposition to the deistic concept of natural religion Lessing approached the history of religions from the thesis of historical development and in this way exerted considerable influence on the subsequent study of comparative religion. He held that religion is not mere blind faith but is a result of an inner experience and finds its true expression in active morality which is valued for its own sake. No positive religion can be considered intrinsically superior to any other. Divisions of religion as well as of class and state are necessary evils that are to be overcome by the ideal of humanity. Mankind's progress is possible only through the striving for truth. The traditional Enlightenment concepts of the best of all possible worlds and the consequent duty of man to submit to God created conditions are no longer accepted without question. Lessing doubts, and instead of the complacent optimism which characterized the period there runs through his work a trail of skepticism and intellectual inquiry which are of enduring significance no matter how remote his explicit preoccupations may become to later ages. He was probably the most important influence in eighteenth century Germany in awakening a new consciousness of the problems of the modern world.

FRITZ BRÜGGEMANN

Works: The best editions of Lessing's works are those by Julius Petersen and Waldemar von Olshausen, 25 vols. (Berlin 1925–29), and by K. Lachmann, 24 vols. (3rd ed. by F. Muncker, 1886–1924). His plays are translated as *Dramatic Works*, ed. by E. Bell, 2 vols. (London 1878).

Consult: Schmidt, Erich, *Lessing, Geschichte seines Lebens und seiner Schriften*, 2 vols. (4th ed. Berlin 1923); Danzel, T. W., and Gubrauer, G. E., *Lessing*, 2 vols. (2nd ed. Berlin 1880–81); Oehlke, W., *Lessing und seine Zeit*, 2 vols. (2nd ed. Munich 1929); Sime, James, *Lessing*, 2 vols. (new ed. London 1896); Francke, Kuno, *A History of German Literature as Determined by Social Forces* (4th ed. New York 1901) p. 265–300; Biedermann, Karl, *Deutschland im achtzehnten Jahrhundert*, 2 vols. (Leipsic 1854–80) vol. ii, pt. ii, p. 240–359, and vol. iv, p. 478–500; Dilthey, Wilhelm, *Das Erlebnis und die Dichtung* (9th ed. Berlin 1924) p. 17–174; Wiese, Benno von, *Lessing: Dichtung, Aesthetik, Philosophie* (Leipsic 1931); Schrempf, Christof, *Lessing als Philosoph* (2nd ed. Stuttgart 1921); Fittbogen, Gottfried, *Die Religion Lessings* (Leipsic 1923); Kettner, Gustav, *Lessings Dramen im Lichte ihrer und unserer Zeit* (Berlin 1904); Brüggemann, Fritz, "Lessings Bürgerdramen und der Subjektivismus als Problem, Psychogenetische Untersuchung" in Freies deutsches Hochstift, *Jahrbuch* (Frankfort 1926) p. 69–110; Mann, Georg, "Lessings Pädagogik" in *Pädagogisches Magazin*, no. 1000 (1929); Leisegang, Hans, *Lessings Weltanschauung* (Leipsic 1931).

LETELIER, VALENTÍN (1852–1919), Chilean jurist and sociologist. Letelier was professor of administrative law at the University of Chile from 1888 to 1911 and rector from 1906 to 1911. He was the finest representative of positivist science in Chile and one of the teachers who have in the present century contributed most toward the development of higher learning in education, history, law, political science and sociology. As secretary to the Chilean legation at Berlin he obtained much information regarding educational organization, which he incorporated in several pamphlets. His *Filosofía de la educación* (Santiago, Chile 1892, 2nd ed. 1912), in which he stresses scientific education as the only possible basis for general culture, had a profound influence upon educational criteria in Chile and in other Latin American republics. In his major work concerning historiography, *La evolución de la historia* (first published as *Por qué se rehace la historia?*, Santiago, Chile 1886, 2nd ed. 1900), Letelier examined various sources in order to establish the proper foundations on which historical method should be based and demonstrated the value to sociology which history scientifically reconstructed would acquire. In his teaching he contributed greatly to the modernizing of legal studies with regard to both method and subject matter. He pointed out also the necessity for positivistic methods in the study of political science, holding that devotion to ideologies was the cause of the instability of American democracies. In national politics he sided with the radical groups. An exposition of his ideas on these questions is to be found in *La lucha por la cultura* (Santiago, Chile 1895). *Génesis del estado* (Buenos Aires 1917) and *Jénesis del derecho* (Santiago, Chile 1919), which constitute his main contributions to sociology in both its political and juridical aspects, have earned him well deserved fame. Although not wholly original they nevertheless present generalizations regarding matters not thoroughly defined previously in sociological terms—the active influence upon the state of its population,

territory and cities; the origins and development of contracts, of the law of inheritance, criminal and adjective law—all on the basis of a belief that sexual promiscuity and community of goods characterized society in its most primitive form. The conclusions are supported by rigorously inductive methods and vast erudition; noteworthy is the utilization of materials relating to the New World, sources to which European sociologists had not given much consideration.

LUIS GALDAMES

Other important works: *El hombre antes de la historia* (Copiapó 1877); *Las escuelas en Berlín* (Santiago, Chile 1885); *La instrucción secundaria y la instrucción universitaria en Berlín* (Santiago, Chile 1885), in collaboration with Claudio Matte; *De la ciencia política en Chile* (Santiago, Chile 1886). He also edited *Sesiones de los cuerpos legislativos de Chile, 1811–1845*, 37 vols. (Santiago, Chile 1886–1908).

Consult: Fuenzalida Grandón, A., "Don Valentín Letelier y su labor intelectual" in *Información*, vol. iv (1919) 52–56, tr. in *Inter-America* (English ed.), vol. iii (1919–20) 112–20; Encina, F. A., "Valentín Letelier, el profesor" in *Revista chilena*, vol. viii (1919) 233–42; Ubeda Escobar, Carlos, "Bosquejo de la labor pedagójica de don Valentín Letelier" in Universidad de Chile, *Anales*, 2nd ser., vol. ii (1924) 647–703, 1005–43, 1277–1367; Dávila Silva, R., "Los orígenes de la familia en la sociología de don Valentín Letelier," "La familia y la propiedad" and "El origen de la propiedad" in *Revista chilena*, vol. ix (1919–20) 12–25, 251–67 and 379–400.

LE TROSNE, GUILLAUME FRANÇOIS (1728–80), French economist. Le Trosne was king's attorney at the Présidial of Orléans. His early interest was in natural law, but he was soon attracted to the study of economics and became one of the most lucid exponents of the physiocratic doctrine; his views express most clearly the evolution of the school. At first an enthusiastic, inflexible adept of the abstract physiocratic system, he nevertheless evidenced a preference for practical questions, as reflected in his *La liberté du commerce des grains, toujours utile et jamais nuisible* (Paris 1765). Later coming in contact with the detail of fiscal problems he was led to modify the rigidity of the doctrine through recognition of the historical and geographical limitations in the practical application of the principles. He realized that the establishment of the single tax on land would require several years, and he accepted as temporary expedients the maintaining of certain special agricultural land taxes and of the personal taille on farmers, provided it be fixed; the creation of a supplementary tax to be paid by the large cities; and even the survival of import duties on foreign merchandise. Only in politics did he remain obstinately faithful to absolutism—the provincial assemblies which he recommended were to provide only a very restricted administrative competence—and hostile to democracy, that "bizarre and monstrous" government which he doubtless pictured in the form of the violent popular demonstrations against the dealer in wheat or as personified by the vagabonds who had set fire to one of the farms of the magistrate.

G. WEULERSSE

Works: *Discours sur l'état actuel de la magistrature, avec des notes économistes* (Paris 1764); *De l'intérêt social* (Paris 1777); *De l'ordre social* (Paris 1777); *De l'administration provinciale, et de la réforme de l'impôt* (Basel 1779).

Consult: Mille, J., *Un physiocrate oublié* (Paris 1905).

LETTRE DE CACHET. *See* CACHET, LETTRE DE.

LEUBER, BENJAMIN (died 1675), German cameralist. Leuber studied at Leipsic and later was appointed Kammer-Prokurator in Lusatia. In this capacity he participated in the task of monetary reconstruction, the most burning issue of the day in Germany. Leuber's chief work, *Ein kurzer Tractat von der Münze* (2 vols., Jena 1623—Halle 1624), influenced the direction of the later development of German political doctrine. He sharply opposed the Roman law concept of the state dominant in his day, which limited the state's function to that of maintaining law and order, and he insisted that the state assume economic functions. He thus became the founder of the doctrine of the welfare state, which was the point of departure for the rise of mercantilism in Germany and furnished fertile soil for the development of subsequent economic thought. His *Tractat* contains the first attempt in German literature to formulate a monetary theory. According to Leuber money developed out of the most marketable commodity; yet he emphatically denies the commodity character of money and develops and separates the concepts of nominal value and intrinsic value, considering the latter as incidental and of only genetic significance and clearly recognizing the function of money as a universal standard of value. Had Leuber's work not fallen into oblivion, the later cameralists might have been able to construct their monetary theories on a foundation which they worked two centuries to create and which in reality they never completely achieved. Leuber was the author of several other books dealing with monetary as well as general eco-

nomic problems, all of which have apparently been lost.

PETER K. H. WESSELY

Consult: Wessely, P. K. H., in *Schmollers Jahrbuch*, vol. lii (1928) 985–1019.

LEVASSEUR, PIERRE ÉMILE (1828–1911), French historian and economist. Levasseur studied at the École Normale Supérieure. For a time he taught in a *lycée* and in 1868 he was put in charge of a course in economic history and history of economic doctrines at the Collège de France, where in 1872 he became professor of geography, history and economic statistics; he also taught at the Conservatoire National des Arts et Métiers.

Levasseur commenced his scientific career with the study *Recherches historiques sur le système de Law* (Paris 1854), which won him the *doctorat ès lettres*. This was the first thesis offered on a subject of this kind in France; before Levasseur only Augustin Thierry and Michelet had applied the historical method to the study of economic phenomena. In 1858, when the discoveries of gold deposits threatened gold with demonetization, Levasseur wrote *La question de l'or* (Paris 1858). A year later he published his main work, *Histoire des classes ouvrières en France depuis le conquête de Jules César jusqu'à la Révolution* (2 vols., Paris; 2nd ed. with title *Histoire des classes ouvrières et de l'industrie en France avant 1789*, 1900–01), which was followed in 1867 by a *Histoire des classes ouvrières en France depuis 1789 jusqu'à nos jours* (2 vols., Paris; 2nd ed. with title *Histoire des classes ouvrières et de l'industrie en France de 1789 à 1870*, 1903–04). Although it may be criticized as to method, details of documentation and occasional overhasty generalization it is a monumental study indispensable to the student of French economic history. The same, however, cannot be said for his *Questions ouvrières et industrielles en France sous la troisième République* (Paris 1907) or for his *Histoire du commerce de la France* (2 vols., Paris 1911–12). Levasseur was a member of the Académie des Sciences Morales et Politiques and prefaced its edition of the *Ordonnance des rois de France, règne de François Ier* (2 vols., Paris 1902–16) with a study of money in the sixteenth century, which was separately reprinted as *Mémoire sur les monnaies du règne de François Ier* (Paris 1902).

HENRI HAUSER

Other important works: *La population française*, 3 vols. (Paris 1889–92); *L'agriculture aux États-Unis* (Paris 1894); *L'ouvrier américain*, 2 vols. (Paris 1898), tr. by T. S. Adams and ed. by T. Marburg, 1 vol. (Baltimore 1900). For Levasseur's method and scope in teaching economics, see his articles "Trente-deux ans d'enseignement au Collège de France" and "L'enseignement de l'économie politique au Conservatoire des Arts et Métiers" in *Revue internationale de l'enseignement*, vol. xl (1900) 5–25, and vol. xli (1901) 211–28, 294–305 and 385–99.

Consult: Liesse, André, "Notice sur la vie et les travaux de M. Émile Levasseur" in Académie des Sciences Morales et Politiques, *Séances et travaux . . . compte rendu*, vol. clxxxi (1914) 337–61; Guyot, Yves, in *Journal des économistes*, 6th ser., vol. xxxi (1911) 123–24, 177–97; Marion, Marcel, "Faits économiques et sociaux" in *Revue politique et littéraire*, vol. li, pt. i (1913) 146–50, 164–69; Espinas, Georges, in *Vierteljahrschrift für Social- und Wirtschaftsgeschichte*, vol. i (1903) 146–57.

LEVELLERS. It is difficult to establish the exact origin of the term leveller, which in a general sense may be applied to anyone attempting to overthrow existing barriers. As early as 1607 it was used with reference to the peasantry who threw down enclosures in the Midlands, but it was not until Charles I and Cromwell first designated the Interregnum democrats as Levellers that it acquired the precise connotation which has persisted.

The progress of the Leveller movement was due in the main to three factors: the triumph of the less orthodox and more democratic form of Puritanism known as Independency, the position attained by the army in 1647 and the indomitable leadership of John Lilburne. The victory of Independency cleared the way for widespread criticism of established forms of government, secular as well as ecclesiastical. The Independents were taxed with having cast all mysteries and secrets of government before the vulgar and with teaching both people and soldiery to criticize government in the light of first principles. By 1647 the army, which was predominantly Independent in opinion, was in a position of considerable political power; levelling doctrines spread rapidly among its members, particularly among the rank and file, who in cooperation with civilian Levellers drew up the Agreement of the People. From this document, presented to the House of Commons in January, 1648–49, it is possible to form a fairly clear idea of the Levellers' political demands, which despite subsequent amplifications and extensions remained essentially unchanged.

The starting point in Leveller theories was the inalienable nature of individual rights. Richard Overton in *An Arrow against All Tyrants and*

Tyrany (1646) declares that "to every Individuall in nature, is given an individuall property by nature, not to be invaded or usurped by any." Directly deducible from this was the principle of popular sovereignty, which was given its formal expression in the declaration contained in the Fundamental Lawes and Liberties of England (1653) that the people of England are the "sole original" of the authority of Parliament and army and have "all Law and Authority within themselves." The Agreement of the People although containing no such general statement attempts to translate the principle into practise by the introduction of constitutional reforms. To the end that Parliament might be truly representative a reform of the franchise and a redistribution of seats in accordance with the density of population were demanded; the representative assembly must meet every two years, and the electorate must consist of all native Englishmen of twenty-one years and over who are of sufficient economic substance to be "housekeepers" and to be assessed toward the relief of the poor.

From the doctrine of the sovereignty of the people proceeds the most distinctive although not the most enduring contribution of the Levellers to English political thought: their insistence on the doctrine of reserved powers, powers so fundamental and sacred that they must be removed from the control of the elected assembly. This conception of fundamental law, eventually to become alien to the English constitution, was not uncommon during the Interregnum. Men of varied opinions agreed that the constitution should be safeguarded by more rigid means than had prevailed. Cromwell declared his belief in certain fundamentals which should be beyond the power of Parliament to alter. The Agreement of the People restating in explicit terms this doctrine of fundamental powers makes provision for the vigorous curtailment of the jurisdiction of the elected assembly. Religion is removed entirely from its sphere, and fundamental principles are laid down for religious governance. In the same spirit the elected assembly is forbidden among other things to force citizens to serve in a military capacity abroad or to exempt individuals from the power of the laws.

A third feature of the Levellers' political program was the doctrine of the separation of powers. The Agreement of the People forbids any member of a council of state, any army officer, treasurer of public money or practising lawyer to sit in the elected assembly. *England's New Chains Discovered* (1648–49) states in general terms that it is "an occasion of much partiality, injustice and vexation to the people, that the Law makers should be Law executors."

Although the program of the Levellers remained, in contrast to that of the Diggers, predominantly political in character it gradually came to include a number of social and economic reforms. The latest edition of the Agreement of the People (May, 1649) shows a distinct advance in that direction. The important monopolies of the trading companies were declared to be contrary to the rights of Englishmen to trade freely beyond the seas. Lilburne waged a vigorous warfare against the Merchant Adventurers, toward whom he bore a special grudge; and Walwyn, sometimes suspected of being the most revolutionary of the Levellers, fought the privileges of the Levant Company. The reform of the law both civil and criminal was demanded, particularly the reform of the law of debt and the abolition of capital punishment except for murder. Excise and customs were attacked as weighing heavily on the poor and "middle sort" of people and causing obstruction of trade, and the employment and care of the poor were insisted upon. In their criticism of certain features of the existing land laws the Levellers approached the Diggers most closely. Primogeniture and copyhold were censured, and the *Case of the Armie Truly Stated* (1647) insisted that the "antient rights belonging to the poore," such as rights of common, should be restored.

Cromwell, despite his toleration of many varieties of opinion, condemned the Levellers' proposals on account of their doctrinaire and revolutionary character. Ireton likewise strongly opposed their program, realizing more clearly than did the Levellers themselves that a political constitution founded on the inalienable rights of the individual might lead to revolutionary criticism of the existing economic and social order. The conservative elements of the time were anxious to identify the Levellers with the "True Levellers," or Diggers, and thus to rally a powerful opposition against both. But while it may be argued that advanced political democracy must perhaps unconsciously pave the way for advanced economic democracy, it is not possible to trace a definite connection between the Levellers and the Diggers. The Levellers' doctrines were individualistic, mainly political and secular; those of the Diggers were communistic, mainly social and economic, and strongly religious.

There was, so far as is known, no connection in personnel between the two bodies. The Levellers disclaimed all responsibility for the Diggers' doctrines, and in the Agreement of the People the power to level estates was removed from the competence of the elected assembly.

In the matter of numbers, organization and tactics the Levellers appear to have been far superior to the Diggers. In April, 1649, the members of the Council of State were informed that Winstanley, Everard and their little band of followers had begun to dig up the land on St. George's Hill in Surrey. Winstanley and Everard outlined a utopian program, which they refused, however, to back up with any kind of physical force. Throughout the summer of 1649 the Diggers remained at work on St. George's Hill, but in the autumn a party of soldiers was dispatched to break up their settlement.

The importance of the Diggers lies almost entirely in the realm of theory. In their efforts to eliminate social and economic inequalities, particularly in the ownership of land, they pointed out the inadequacy of political democracy without economic democracy. England would never be a free commonwealth, they maintained, until all the poor commoners had access to the land. The abolition of private ownership in land would improve relations between individuals and between nations and pave the way for widespread social reforms. In one respect the Diggers were more representative of their time than the Levellers, for their theories were saturated with a type of religious mysticism which bore affinities to contemporary Quakerism. Gerrard Winstanley in his *A New-Yeer's Gift for the Parliament and Armie* (1650) says that men jeer at the name of Leveller, but "I tell you Jesus Christ, Who is that powerfull Spirit of Love, is the Head Leveller."

The utopia described in unprecise terms by Winstanley (*The Law of Freedom in a Platform*, 1652) represents a vague type of communism. Everyone is to work in cooperation at the task of planting and reaping and the fruits of his labors are to be deposited in storehouses, from which individuals may fetch supplies. The question of education is considered in detail; Winstanley insists that every child must learn some manual trade, as the exclusive devotion to book learning of any one class leads to presumption and domination. The political machinery of this utopia is rather shadowy and is clearly regarded as less important than the social and economic organization. Fathers of families and "overseers" look after the general welfare of the people. Parliament is retained, but as a court of equity rather than as a legislative assembly. The soldiers are also magistrates and one of their most important duties is the supervision of criminals, who are regarded as erring members of society rather than as outcasts.

The Leveller and Digger movements have often been too lightly dismissed as mere passing phenomena of a stormy period. The influence of both was important in the long run rather than in the immediate future. There is evidence that Lilburne and his followers had a direct influence on Hone and the radicals of the early nineteenth century, while Robert Owen through John Bellers was influenced by the history and theory of the Diggers. It seems justifiable to say that the Levellers and the Diggers sowed the first seeds in England of modern radicalism and modern communism.

M. JAMES

See: AGREEMENT OF THE PEOPLE; COMMUNISM; ANARCHISM; SOCIAL CHRISTIANITY.

Consult: Gooch, G. P., *English Democratic Ideas in the Seventeenth Century*, ed. by H. J. Laski (2nd ed. Cambridge, Eng. 1927) chs. iv and vi; Bernstein, E., *Sozialismus und Demokratie in der grossen englischen Revolution* (4th ed. Berlin 1922), tr. by H. J. Stenning as *Cromwell and Communism* (London 1930); Pease, T. C., *The Leveller Movement* (Washington 1916); Berens, L. H., *The Digger Movement in the Days of the Commonwealth* (London 1906); Conrady, Alexander, *Anfänge der Demokratie in England; Studien zur Geschichte der Levellerbewegung* (Berlin 1920); Kottler, W. W., *Der Rategedanke als Staatsgedanke*, Leipziger rechtswissenschaftliche Studien, vol. xv, vol. i– (Leipsic 1925–) vol. i, ch. iv; James, Margaret, *Social Problems and Policy during the Puritan Revolution 1640–1660* (London 1930); Freund, M., *Die Idee der Toleranz im England der Grossen Revolution* (Halle 1927) p. 268–74.

LEVERHULME, VISCOUNT, WILLIAM HESKETH LEVER (1851–1925), British industrialist. Entering his father's wholesale grocery in 1862 he helped expand its trade well beyond its original compass and by 1884 was ready to retire or to specialize on the wider marketing of some article; he finally decided almost accidentally on soap.

From the beginning he pioneered by producing in large quantity a staple article of good quality to sell at a low price under an attractive registered label. In addition he devoted much attention to advertising and industrial research. Within two years after its establishment in 1885 the manufacturing works at Warrington proved too small and Port Sunlight was begun. It be-

came far more than a soap works. Lever made it a model industrial village with homes for its workers, well paved roads, schools and community centers. The empire of Sunlight Soap had laid its corner stone. Its development proceeded along well defined lines: horizontally, by the purchase and construction of associated works throughout the globe; vertically, by world wide acquisition of raw materials and other ingredients necessary for soap manufacture.

It was in the realm of labor relations that Leverhulme won his widest popular recognition. Motivated by a creed of enlightened self-interest he assured his workers at Port Sunlight a notable degree of security and decency in living and working conditions. Port Sunlight was not the first model industrial village in England, but it remains the chief forerunner in large scale town planning entirely for the workers of one plant. Always convinced of the efficiency of a shorter working day, Leverhulme was a pioneer in the introduction of the eight-hour day and an early advocate of a six-hour day. Provision was made for industrial education by schools and colleges, which became constituent parts of the Port Sunlight works, with periods for study granted from the workday. Other features were profit sharing (without, however, management sharing), old age pensions, group life insurance, half pay sickness allowance and unemployment benefits supplementing state benefits to assure the workers half pay during involuntary layoff. Leverhulme accepted high wages as an essential of a highly productive economy.

B. M. SELEKMAN

Works: *The Six-hour Day and Other Industrial Questions* (London 1918, 2nd ed. by Stanley Unwin 1919), abridged as *The Six-hour Shift and Industrial Efficiency* (New York 1920).

Consult: Leverhulme, William Hulme Lever, *Viscount Leverhulme* (London 1927).

LEVI, LEONE (1821–88), English economist, statistician and jurist. Levi, who was born in Ancona in the Papal States, came in 1844 to Liverpool, where he engaged in commerce and was naturalized. He combined theoretical and practical activity in the fields of business and politics and was instrumental in effecting many reforms, all centering around his major interest of promoting commerce through the improvement of international relations. He aided the formation of chambers of commerce in Liverpool and other industrial centers. His *Commercial Law, Its Principles and Administration* (2 vols., London 1851–52) is a pioneer work in comparative law based on a study of the legal systems of sixty countries; it had considerable influence on British legislation. He strongly urged commercial arbitration in his book *On the State of the Law of Arbitrament and Proposed Tribunals of Commerce* (London 1850). The legislation of 1854 on this subject was influenced by him. His interest in international peace led him into both the more general field of international law and such specific proposals as a council of international arbitration, to which nations were to elect delegates and which would use moral authority to settle disputes and prevent war. He made a statistical study of the economic and class distribution of taxation and urged that it be placed on a more equitable and revenue yielding basis. Levi was concerned also with justice to the wage earner; his book *Wages and Earnings of the Working Classes* (London 1867) is a comprehensive survey based upon statistical and other material from official sources, in which he made some of the earliest estimates of real wages, insisted that lower hours of labor "have increased, not diminished, production" and urged arbitration of labor disputes. His chief work was his *History of British Commerce and of the Economic Progress of the British Nation, 1763–1870* (London 1872, 2nd ed. rev. to 1878, London 1880), a pioneer work in business history. Levi made considerable use of statistics, to the development of which he contributed notably; he consistently endeavored to relate theory and argument to the available statistical material. He edited the monumental statistical summary of parliamentary papers, *Annals of British Legislation*, of which fourteen volumes were published in 1856–65 and four supplementary volumes a few years later. Levi was a professor of commercial law at King's College, London, a member of the bar of Lincoln's Inn and also a representative of the Royal Statistical Society at several European congresses.

NATHAN ISAACS

Other important works: *Chambers and Tribunals of Commerce* (London 1849); *On Taxation: How It Is Raised and How It Is Expended* (London 1860); *Manual of the Mercantile Law of Great Britain* (London 1854); *Report on Technical, Industrial and Professional Instruction in Italy and Other Countries*, Great Britain, Parliament, Sessional Papers, vol. liv (1867–68) no. 33; *International Law, with Materials for a Code of International Law* (London 1887); *Work and Pay; or Principles of Industrial Economy* (London 1877); *The Story of My Life, the First Ten Years of My Residence in England, 1845–55* (p. p., London 1888).

Consult: Royal Statistical Society, *Journal*, vol. li

(1888) 340–42; Hug, W., "History of Comparative Law" in *Harvard Law Review*, vol. xlv (1931–32) 1027–70.

LEVY LAWSON FAMILY, British journalists. Three generations of this family have been identified with the London *Daily Telegraph*. Joseph Moses Levy (1812–88), educated under Thomas W. Hill and in Germany, became in 1855 proprietor of the *Sunday Times*. Two months after the founding of the *Daily Telegraph* on the repeal of the newspaper stamp tax in 1855 Levy, who had been its printer, acquired it in payment of a debt. He at once reduced its price to one penny thus making it the leader of the new "cheap press." His business acumen and the journalistic flair of his son Edward (1833–1916) enabled the *Telegraph* to struggle on until, with the repeal of the excise on paper in 1861, it established itself on a firm financial basis. By 1871 "Jupiter Junior," as the *Telegraph* was dubbed with a hint of its rivalry with the *Times*, had a circulation of 200,000, treble that of the "Thunderer" itself. In 1885 Edward Levy, known since 1875 as Levy Lawson (Lawson was the name of an uncle) took over sole control of the paper. An ardent supporter of Gladstone until 1878, he then opposed the Liberal policy on Turkey and Ireland and was thenceforth an advocate of imperialism and a strong navy. In 1903 Levy Lawson, now Lord Burnham and regarded as the dean of English journalism, retired. The *Telegraph* passed to his son Harry Levy Lawson (1862–), First Viscount Burnham, who sold it in 1928.

The *Telegraph*, decried by Matthew Arnold as the quintessence of rowdy Philistinism, was the greatest English journalistic success of its generation. Sacrificing dignity for vivacity and "human interest" it proved that "news" was not of necessity a heavy or serious matter. It cultivated a conversational style ("Telegraphese"), exemplified by G. A. Sala's writing; was not ashamed of emotion, whether tender or chauvinistic; and was an innovator in catering to women. Under the first Lord Burnham the *Telegraph* in conjunction with the New York *Tribune* sent Stanley to complete Livingstone's work in Africa, it raised famine and war relief funds and in general, as the *enfant terrible* of journalism, prepared the way for Northcliffe and a later journalistic revolution, which it managed to survive.

H. DONALDSON JORDAN

Consult: ***Daily Telegraph*** (London), October 13, 1888, and January 10, 1916; *Times* (London), January 10, 1916; Rhode, Dyke, "Social Relationships of the 'Daily Telegraph' " in *New Century Review*, vol. iii (1898) 265–68; Bourne, H. R. Fox, *English Newspapers, Chapters in the History of Journalism*, 2 vols. (London 1887) vol. ii, p. 235–37; Arnold, Matthew, *Friendship's Garland* (London 1871); Raymond, E. T. (Thompson, E. R.), *Uncensored Celebrities* (London 1918) p. 203–07; Firth, J. B., in *Spectator*, vol. cxvi (1916) 106–07.

LEWIŃSKI, JAN STANISLAW (1885–1930), Polish economist and sociologist. Lewiński was professor at the School of Higher Commercial Studies in Warsaw. Early in his career he became interested in economic history. He believed that increase of population offers the most important clue to the explanation of economic development and attempted to provide an inductive affirmation of this thesis in his books *L'évolution industrielle de la Belgique* (Instituts Solvay, Études sociales, no. vii, Brussels 1911) and *The Origin of Property* (London School of Economics and Political Science, Studies in Economics and Political Science, no. xxx, London 1913). In the former he concluded that increase of population was the most powerful factor in bringing about the industrialization of Belgium; in the latter he showed that increase of population and consequent scarcity of land forced the transition from nomadism to settled agricultural life, which inevitably led to the rise of private property.

Later Lewiński turned his attention to problems of money and credit. He attacked the logical validity of the quantity theory of money and opposed the view of leading contemporary economists who believed in the possibility of stabilizing the general price level through central bank action. According to Lewiński the influence is in the opposite direction: from price movements to the volume of credit. He pointed out further that the theory of price control through the control of credit had as yet found no empirical confirmation and maintained that the possibilities of price control by the banks of emission are especially limited during periods of depression. While essentially a follower of classical economics, Lewiński viewed with skepticism the achievements of the newer economic theory.

ADAM KRZYŻANOWSKI

Other important works: ***Twórcy ekonomji politycznej***, Biblioteka Universytetu Lubelskiego, Wydział prawa i nauk społeczno-ekonomicznych, no. i (Lublin 1920), tr. as *The Founders of Political Economy* (London 1922); ***Zasady ekonomji politycznej*** (Principles of political economy) (Warsaw 1923); *Money, Credit and Prices* (London 1929).

LEWIS, SIR GEORGE CORNEWALL (1802–63), English scholar, statesman and political theorist. Through his Oxford education Lewis was turned toward the classics. At the age of twenty-five he was able to pursue his interests through classical, German, French and Italian literatures. One of his first publications was a small treatise on the unsatisfactory state of the terminology of political science, which was followed by a number of scholarly articles in various English periodicals. By reason of a lengthy and varied political experience upon commissions of inquiry, in Parliament and through the holding of several cabinet portfolios Lewis' attention was increasingly devoted to political theory. His work on the government of dependencies and his inquiry into the influence of authority in matters of opinion appeared at times contemporaneous with the importance of questions of colonial policy and Chartist agitations respectively. His mature work, however, remained to be incorporated in the two-volume treatise on methods of observation and reasoning in politics. Before Lewis became active in politics he came to the conclusion that government was a matter of contrivance and design, capable of improvement by intelligent men. In holding this idea he was unquestionably influenced and supported by personal contact with John Austin and J. S. Mill as well as by his vast reading. Particularly did Austin's analytical methods leave their mark upon him. He found, however, that precision and intelligent direction could not be so easily applied in the solution of concrete problems of government. This difficulty could be overcome only by the establishment of political science upon sound foundations, and it could not be so established until its theoretical basis was worked out. Impressed by the progress that had been made in the physical sciences and by Bacon's ideas and meanwhile integrating his speculations on certain aspects of history and historical method, Lewis set to work upon a comprehensive treatise on the content and methodology of political science. He defined the content as "the nature and acts of a government, and the acts and relations of men as determined by, or affecting, the government." He applied his method of precise definitions and analysis. The most original part of the treatise deals with the relation of history to politics and the extent of the possible application of physical science methodology in politics.

J. G. HEINBERG

Important works: *Remarks on the Use and Abuse of Some Political Terms* (London 1832), reprinted with notes and appendix by R. K. Wilson (Oxford 1877); *An Essay on the Government of Dependencies* (London 1841), reprinted with an introduction by C. P. Lucas (Oxford 1891, rev. ed. London 1901); *An Essay on the Influence of Authority in Matters of Opinion* (London 1849, 2nd ed. 1875); *A Treatise on the Method of Observation and Reasoning in Politics*, 2 vols. (London 1852); *Letters . . . to Various Friends*, ed. by Gilbert F. Lewis (London 1870).

Consult: Bagehot, Walter, Essay on Lewis in *Works*, ed. by Mrs. Russell Barrington, 10 vols. (London 1915) vol. iv, p. 187–224.

LEXIS, WILHELM (1837–1914), German economist and statistician. Lexis, the son of a physician, originally devoted himself to mathematics and the natural sciences; in the 1860's he became a publicist and a self-taught economist. In 1872 he was appointed to the chair of economics at the University of Strasbourg and from 1874 to 1876 was professor of geography, ethnology and statistics at Dorpat. After teaching economics at the universities of Freiburg i. Br. and Breslau he went to Göttingen, where he taught economics from 1887 until his death. Because of his great organizing ability and amazing erudition Lexis was an invaluable coeditor of the first three editions of the *Handwörterbuch der Staatswissenschaften* and after 1891 of the *Jahrbücher für Nationalökonomie und Statistik*. He was also an irreplaceable aid to his friend Althoff, the power in the Prussian Ministry of Education, with which he became officially connected as an independent expert in 1893. Among the semi-official reports which appeared under Lexis' direction and in large part from his pen was the monumental work *Das Unterrichtswesen im Deutschen Reich* (4 vols., Leipsic 1904).

Lexis was a scholar of encyclopaedic range and an acute and alert thinker. He began with a comprehensive account of the French export bounty system (Bonn 1870) and published in the same decade a study of employer and employee organizations in France (Verein für Sozialpolitik, *Schriften*, vol. xvii, 1879). The latter reflects Lexis' stand as a socialist of the chair, which later caused him to reject the doctrine that scholars as such should abstain from value judgments. His most general work in the field of economics is the *Allgemeine Volkswirtschaftslehre* (Die Kultur der Gegenwart, sect. ii, vol. x, pt. i, Berlin 1910; 3rd ed. with critical introduction by Karl Diehl, Leipsic 1926); clear, concise and of lasting value, it is an independent treatise which adopts business concepts wherever possible and tests deductive conclusions in the light of eco-

nomic realities. He assimilated the terminology of labor value to such an extent that he was occasionally mistaken for a socialist.

Lexis' mathematically trained mind found its greatest satisfaction where it could operate with exact concepts and with data capable of numerical treatment; hence his preference for subjects like money, statistics and insurance. Regarded as a high authority by both sides in the bimetallist controversy, he deviated temporarily and only in a few particulars from the position of consistent gold monometallism. He rejected paper money because of its liability to abuse but became convinced after a study of Austrian and Russian monetary history that a stable paper currency is possible under certain circumstances. His most original contributions were in the field of mathematical statistics. Special mention must be made of his theory of statistical dispersion, recognized as a great scientific achievement, and of a new method of graphic treatment of mortality, first broached in his *Einleitung in die Theorie der Bevölkerungsstatistik* (Strasbourg 1875) and developed in later publications. He made use of the results of these studies in his seminar in insurance—the first of its kind, later introduced in many universities—which he conducted with great success at the University of Göttingen from 1895 to 1914. His Göttingen lecture course on the economics and statistics of insurance became a model for instruction in insurance economics in other German universities.

KARL OLDENBERG

Consult: Bortkiewicz, L., in *Zeitschrift für die gesamte Versicherungswissenschaft*, vol. xv (1915) 117–23; Lorey, W., "Wilhelm Lexis und seine Bedeutung fur die Versicherungswissenschaft" in *Nordisk statistik tidskrift*, vol. iv (1925) 31–41; Klein, F., in Deutsche Mathematiker-Vereinigung, *Jahresbericht*, vol. xxiii (1914) 314–17.

LI HUNG CHANG (1823–1901), Chinese statesman and diplomat. After receiving the usual classical education Li Hung Chang entered the civil service. He became attached to the army during the Taiping rebellion and because of his military successes was appointed commander in chief and governor of Kiangsu. He inherited Ward's, later Gordon's, "ever victorious army," whose efficiency insured the defeat of the rebels. In 1867 while suppressing the Nienfei he became viceroy of the Hukwang provinces and from 1870 to 1894 served as viceroy of Chihli and superintendent of northern trade. During this period a great deal of his time was devoted to diplomatic and foreign commercial affairs.

Li Hung Chang stands out among contemporary Manchu officials for his appreciation of the strength of the new forces of the West and for his attempts to cope with them by reforming Chinese administration and by introducing the material features of western civilization. He urged more centralized government, created a modern army and navy, established technical schools and adopted the plan of sending young Chinese abroad for study. He was responsible for the construction of railways and of a telegraph system, the organization of the China Merchants' Steamship Company, the introduction of modern mining machinery, the foundation of a medical college and other progressive measures. Unfortunately the full development of many of these projects was arrested by official conservatism or corruption.

But it was in foreign affairs that Li's influence was paramount. Aware of China's weakness, he insisted on a policy of conciliation, which he supplemented by diplomatically setting the powers against each other and by creating through the foreign press an exaggerated idea of China's military power. His masterly diplomatic abilities were, however, heavily handicapped by China's continued weakness. Among his achievements were the settlement of the Margary murder case with England, of the Franco-Chinese war and of the inhuman coolie traffic with Peru. When the long drawn out duel with Japan over the Liukiu Islands and Korea ended in a war which revealed the superficiality of China's military reorganization, Li lost his prestige. He was restored to power to negotiate the Shimonoseki treaty and by gaining the intervention of Russia, Germany and France succeeded in avoiding the stipulated cession of southern Manchuria to Japan, but at the eventual cost of the Russian lease and railway concessions in Manchuria with their attendant complications. His fear of Japan constantly forced him into a pro-Russian policy. His last service was to save the Manchu dynasty by negotiating with the victorious European powers after the Boxer outbreak, again winning concessions with the aid of Russia, in return for which the latter demanded a virtual protectorate over Manchuria.

WILLIAM JAMES HAIL

Consult: Bland, J. O. P., *Li Hung Chang* (London 1917); Douglas, R. K., *Li Hung Chang* (London 1895).

LIABILITY. Although the term is used also in other senses, its most accepted meaning is a situation in which one may exact legally and

another is legally subjected to the exaction. One of the persistent problems of jurisprudence is how to explain and systematize these situations in which one may exact from another that, as the Roman law formula puts it, he "give or do or furnish" something for one's advantage. A general theory of liability in this sense is constantly referred to as the basis of legal reasoning and by way of critique. The Roman texts conceived in terms of natural law speak of a bond of right and law whereby the one may justly and lawfully exact and the other is bound in justice and law to perform. The analytical jurist speaks of rights in personam—legally recognized and enforceable claims against definite particular individuals. But obligation, the Roman and civilian term for the relation of the parties to such a right, is an exotic in that sense in the common law world. The Anglo-American lawyer, thinking procedurally, speaks of contracts and torts, using contracts in a very wide sense to include situations giving rise to duties of restitution enforceable procedurally *ex contractu*. Thus liability may be looked at from the standpoint of the acts or events giving rise to the capacity of exaction and duty of performance (as in the common law mode of speech—contract, quasi-contract, tort), from the standpoint of the relation (as when Romanist and civilian speak of "obligation"), from the standpoint of the capacity to exact (right in personam, active obligation) or from the standpoint of subjection to the exaction (passive obligation). As the relation is not the significant thing for systematic purposes and the phrase right in personam and its correlative right in rem are apt to be misleading, there is a general tendency to use some word denoting the whole situation (liability, *Haftung*) or, as Demogue does, to define obligation in terms of the situation rather than of the relation.

One historical starting point of liability is recovery of money by way of penalty for a private wrong. One who did an injury or stood between an injured person and his vengeance by protecting a kinsman, a dependent person or a domestic animal that had done an injury must compound for the injury or bear the vengeance of the injured. With the putting down of the feud as a recognized remedy payment of composition becomes a duty rather than a privilege or, in case of injury by persons or things in one's power, a duty alternative to one of surrendering the offending dependent or thing. Later composition comes to be measured in terms of the injury rather than of the vengeance to be bought off and composition for vengeance becomes reparation for the injury. As a result of this history the Roman law world thinks of the wrongdoer as debtor to the injured person for the reparation.

Another historical starting point of liability is recovery of a thing certain or, what was originally the same, a sum certain, promised in such a way that the failure to carry out the promise would endanger the general security. One might in making a promise have called the gods to witness, and the polity might give a legal remedy to the promisee lest he invoke the aid of the gods and jeopardize the general security. Or one might have called his neighbors to witness and a legal remedy might be given lest the affronted neighbors, invoked by the promisee, threaten the peace. Such things happened when, for example, composition was promised for some injury not specified in the legal tariff of compositions or where one who held another's property for some temporary purpose failed to return it. Before the days of coined money it was hard to distinguish between lending a horse for the borrower to ride to town and lending a cow to enable the borrower to pay a composition. The Roman condiction, which as the type of actions in personam is the historical starting point of rights in personam as well as of theories of obligation, was at first a recovery of a thing certain due upon promises of this sort.

When lawyers began to generalize and to frame conscious theories, the crude beginnings of liability in a duty to compound for insult or affront to man or gods or politically organized society, lest they be moved to vengeance, became liability to answer for injuries caused by oneself or done by persons or things in one's power and liability for certain promises made in solemn form. Thus arises a twofold basis for liability—the duty to repair injury and the duty to carry out formal undertakings—which has persisted in subsequent theory. But the resulting categories of delict and contract do not represent any inherent requirement of legal thinking. They are historical products.

In the seventeenth and eighteenth centuries philosophical jurists, applying rationalist method to the Roman formulae calling for the judgment demanded by "good faith" in particular relations or transactions, sought to develop logically the "nature" or ideal form of situations where liability was asserted or recognized. And it proved easy to fit the two historical categories —formal undertaking and delict—into this mode of thought. The duty to perform an inten-

tional undertaking seemed to rest on the inherent moral quality of a promise which made it intrinsically binding on an unpright man. The typical delict was intentional aggression upon the person or the substance of another; hence the significant basis of delictal liability seemed to be the moral duty to repair an injury caused by wilful aggression. Liability under both categories rested on the demands of good faith in view of intentional action.

Nineteenth century jurists substituted for this ethical conception a metaphysical one. They conceived of law as realizing an idea of liberty. The highest good was a maximum of abstract free individual self-assertion. The end of law was to bring about the widest possible abstract individual liberty. A regime of voluntary assumption of duties was the rational outcome of the universe; it was the ideal toward which evolution continually tended. Hence the growth of law must be in the direction of giving the widest possible effect to the declared will and imposing no duties except to effectuate individual wills or reconcile individual wills in action. Accordingly liability could flow only from assumed duties or from culpable conduct.

It was not possible to adjust the actual precepts of legal systems to this will theory of liability. An appearance of adjustment was brought about where settled rules of law held men answerable in the absence of actual culpability by assuming a culpability as established by the fact of liability. Also where one was held to duties without any undertaking, it was said that an undertaking was implied. But the historical jurists did not hesitate to say that cases of legal liability without fault were only historical survivals which should be eliminated, and they came very near to establishing throughout the world an ideal of no liability to repair injuries except in case of fault. Indeed the law in continental Europe for a time came very near to a consistent scheme of delictal liability for fault and for fault only, and the conception of a legal transaction came very near to establishing a regime of liability for all intentional declarations of will to be bound. But it was never possible to fit quasi-contractual liability into this theory, and many cases of delictal or quasi-delictal liability without fault obstinately persisted in spite of the theory.

In the present century the tendency is to give over the will theory of liability and to hold that the law gives effect (or should give effect) to the reasonable expectations arising out of conduct, relations and situations. In the civilization of today men must be able to assume that those with whom they deal in the general intercourse of society will act in good faith, that others will commit no intentional aggressions upon them, that when others act affirmatively they will do so with due care and that where one maintains potentially dangerous things or employs potentially dangerous agencies he will keep them in check. The reasonable expectations involved in these postulates of civilized society and their corollaries are the basis of recent theories of liability.

ROSCOE POUND

See: JURISPRUDENCE; TORTS; NEGLIGENCE; CONTRACT; DAMAGES; AGENCY; CRIMINAL LAW; STATE LIABILITY.

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LIABILITY INSURANCE. *See* COMPENSATION AND LIABILITY INSURANCE; CASUALTY INSURANCE.

LIANG CH'I-CH'AO (1873–1929), Chinese scholar, publicist and statesman. At the age of eighteen Liang joined the reform movement under his teacher K'ang Yu-wei and in 1895 served as secretary of the first political meeting in Peking. In the following year he became editor of *Shih wu-pao* (Current affairs). His brilliant advocacy of the modernization of China soon won him widespread recognition. After the failure of the coup d'état of 1898, which had been directed at deposing the dowager empress, he fled to Japan where he remained—except for short visits to Honolulu, the United States and Australia and a secret trip to Shanghai to take part in the unsuccessful rising at Hankow—until the republican revolution of 1911. In Japan he edited successively *Ch'ing yi pao* (Public opinion), *Hsin min ts'ung pao* (New people), *Chen luen* (Political review) and *Kuo feng pao* (National movement); of these the *Hsin min ts'ung pao* was the most important. Abandoning K'ang Yu-wei's idea of a Confucianist revival he popularized western political philosophy and history, openly attacked the Manchus and criticized Chinese political thought and social institutions. He invented a new style of vigorous and lucid writing and introduced a new freedom into Chinese prose by adopting foreign terms and colloquial expressions. Liang became a predominant influence in Chinese intellectual life; the *Hsin min ts'ung pao* achieved the relatively enormous circulation of 20,000.

Although before 1911 Liang had advocated a constitutional monarchy as a bulwark against recurrent revolutions, once the republic was established he supported it loyally. Opposed to the 1913 revolution, he served as minister of justice in Yuan Shih-kai's government, resigning when he discovered that Yuan was plotting against the republic. In 1916 he led the armed opposition against Yuan's monarchist coup d'état and in 1917 joined Tuan Ch'i-jui in suppressing the restoration, becoming minister of finance. Throughout these years Liang was the recognized leader of the *Chin pu tang* (Progressive party). He was chiefly responsible for China's joining the Allies in the World War.

With the continuation of civil war after 1917 Liang retired from politics. He attended the Paris Peace Conference of 1919 and upon his return to China devoted himself to literary and historical studies, trying to make a critical revaluation of Chinese culture. Some of these were written in the spoken language, as he was an enthusiastic supporter of the literary renaissance which aimed at the replacement of the dead classical language by the living tongue. He lectured in the various universities and from 1924 to 1928 was research professor at the University of Ts'ing-hua.

V. K. TING

Important works: *Intellectual History of the Manchu Dynasty* (Shanghai 1921); *The Philosophy of Motze* (Shanghai 1921); *The Method of Studying History* (Shanghai 1922); *History of Chinese Political Thought before the Ts'in Period* (Shanghai 1923); *History of Chinese Political Thought during the Early Tsin Period*, tr. by L. T. Chen (London 1930); *Essays on the History of Chinese Buddhism* (Shanghai 1923); *The Collected Works of Liang Ch'i-chao* (Shanghai 1925).

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LIBEL AND SLANDER are the two branches of the Anglo-American law of defamation. If the defamatory matter is given a permanent form by some such method as writing, printing or painting it is libel; if the form is merely temporary, such as spoken words or gestures, then it is slander. The division is thus based upon the method of publication. Many legal systems regard written defamation as more serious than that which is merely spoken, but Anglo-American law is peculiar in clinging to separate bodies of law for what it regards as distinct wrongs.

The illogical common law distinction between libel and slander can only be understood historically. The concept of slander was the first to take shape. Anglo-Saxon law like other Germanic laws had little to say about ordinary defamation although it took a serious view of insult by word or gesture, which it visited with savage penalties, such as the excision of the tongue. After the Conquest the punishment took the newer form of an ignominious withdrawal of the offensive words, and the custumals of local courts show that insulting words continued to be punished by them throughout the Middle Ages. The royal courts declined to deal with such trivial matters; hence the rules that a slander is not actionable unless it is published to a third person.

Although in 1295 Parliament emphatically declared that there was no remedy for slander at common law, it had already been forced to take some notice of the spreading of scandalous rumors about great men as a result of which po-

litical disturbances might occur. It was enacted in 1275 that one who repeated such tales was to be imprisoned until he found the originator of them. This provision was reenacted in 1378, and in 1388 the council was given discretionary powers over *scandalum magnatum* in order to protect prelates, peers, judges and certain great officers of state. The peasants who revolted in 1381 complained of the law of *scandalum magnatum*, which seems to have been used oppressively. Later legislation in 1554 and 1558 appropriately described the offense as "seditious," but by a curious change it soon after was construed as giving only a civil remedy for slander, by way of an action on the case for damages, to the persons mentioned in the statutes.

The church also punished those who defamed their neighbors. It would seem that this jurisdiction developed by extending the punishment of those who laid false criminal charges to include those who merely imputed crimes. As a great variety of moral lapses were crimes in ecclesiastical law, it followed that a large number of slanders could be prosecuted on these grounds, and the church retained this jursidiction in theory until 1855. As an unfortunate consequence of this the common law refused a remedy in those cases where the church had jurisdiction by reason of an imputation concerning matters of spiritual cognizance. The ground for this refusal was supposed to be the impossibility of trying in a secular court the truth of such an imputation if it were pleaded as a defense. Moreover by means of prohibitions the common law courts strictly confined the church to the criminal side of its jurisdiction and forbade any award of money compensation to the injured party.

The common law, however, finally developed an equivalent doctrine for matters within its own jurisdiction, and thus in the sixteenth century an action for damages was allowed when there was an imputation of a crime punishable in a common law court with imprisonment. Such a slander was said to be actionable per se, since it was unnecessary for the plaintiff to prove special damage. Early in the seventeenth century two other classes of slander were settled as actionable per se; namely, the imputation of leprosy or venereal disease and reflections upon a man in respect of his office, profession or trade. There was great reluctance to make any further addition to these categories, and it was not until the Slander of Women Act of 1891 that the imputation of unchastity in a woman was made actionable per se without proof of special damage, although in the city of London and a few other localities it had been so since the Middle Ages.

Late in the sixteenth century the common law courts had also given a remedy for slanderous words of every sort, even those imputing merely ecclesiastical offenses, if temporal damage resulted. It would seem that such a remedy had existed as early as the fourteenth century in the county court, although not in the central courts. Early in the seventeenth century therefore the common law had already established the main principles of slander as they exist today, tradition associating Sir Edward Coke with the work of laying their foundations.

Although the special law of libel still remained to be developed, there resulted an immense flood of litigation, which seriously embarrassed the courts. In order to stem the tide they hit upon the singular expedient of diminishing the quality of their justice in order to reduce the demand for it. To this end they insisted upon very elaborate pleading, inventing a great many rules governing the use of the colloquium, which sought to set out the circumstances in which the words were spoken and to show that they were in fact directed against the plaintiff, and the innuendo, which explained the defamatory meaning of the words where it was not immediately apparent. Words were construed as innocent if by any perversion of grammar or logic they could be twisted from a defamatory meaning.

In the meantime another line of development was taking place in the prerogative courts. Since the statutes on *scandalum magnatum* were now rarely invoked and had come to be regarded as civil rather than criminal in their scope, the lack of criminal law on defamation was being felt. The Privy Council and Star Chamber had from the first exercised strict control over the press, and soon all kinds of "libels" (written or spoken) attacking public officers were rigorously dealt with. New rules appeared. Publication to a third person was not necessary to constitute the crime; repetition was as serious as originating a libel; merely to possess without publishing a libel was "perilous." Libels on private persons were treated on similar lines, for they too tended to provoke violence and disorder, particularly dueling. The truth of the statements (always a defense at common law) was not a defense in the Star Chamber if the defamation were in writing, and libels upon the dead were equally punishable as provoking disorder. Although the Star

Chamber did not confine the word libel to writings only, any more than the common law restricted slander to words, yet it seems to have regarded spoken and written defamation as needing different treatment. Writing, it was held, greatly aggravated the offense, which consisted in the manner of defamation, and so truth could not constitute a defense; when defamatory words were only spoken, however, it was the matter that counted, and so its truth was a good defense.

These developments were crystallized in the well known case *De libellis famosis* (5 Rep. 125) decided in 1606, which demonstrates that the judges of the Star Chamber had been influenced by the Roman law but that they had misapplied it. In the early Roman law the abusive chant or song had been punished capitally, while less grave forms of insult were classified with physical affronts as *injuriae*. The praetor later gave an *actio injuriarum aestimatoria*, whereby the defamed might be awarded damages proportioned to the gravity of the offense and its publicity, and in the time of Sulla the *lex cornelia de injuriis* imposed heavy criminal penalties, which later imperial legislation retained more especially for anonymous attacks by means of epigrams or pasquinades, the so-called *libelli famosi*. It was thus not the mere form but the character of the matter published that constituted the offense.

The abolition of the Star Chamber in 1641 compelled the common law courts to decide how much of its jurisdiction was worth retaining and how far its doctrines were capable of blending with the common law. This was the especial task of the Restoration judges, and they began (in a judgment by Sir Matthew Hale in 1670, Lake *v.* King, 1 Lev. 240) by accepting the distinction which the Star Chamber had already foreshadowed between written and spoken defamation. Since then libel has had its own rules, rules more modern in spirit than those of slander. Since the Star Chamber, although primarily a criminal court, not only punished the libeler but occasionally awarded damages to the injured party, libel may still be treated according to circumstances as either a tort or a crime, thus differing from slander of a private person, which was never criminal. On the other hand, the criminal definition of libel was so wide that there have survived forms of libel which are criminal although not actionable; examples are libels upon the dead and upon a sect or class of people, where no particular individual is indicated. Again, since the Star Chamber had no forms of action, the rules of special damage which are characteristic of those slanders that are not actionable per se were likewise avoided. Finally, since the Star Chamber did not use a jury, the King's Bench, when it assumed jurisdiction over libel, confined the function of the jury to finding such facts as authorship and publication, reserving for the bench the question whether those facts constituted a libel. A long succession of political libels in the eighteenth century showed so clearly that the King's Bench was the successor to the spirit as well as to the letter of the Star Chamber's law of libel that finally in 1792 Fox' Libel Act was enacted, allowing the jury to find a general verdict in cases of criminal libel.

The earliest of the defenses to defamation to become established was "justification": proof that the statement was true. This very soon became the rule in slander and was extended soon after the Restoration to the tort of libel, although as a result of the Star Chamber tradition it was not available against a criminal charge of libel until Lord Campbell's Libel Act of 1843 allowed truth to be proved even in criminal cases, if it could be shown that publication was for the public benefit. Furthermore since the Star Chamber had customarily described written libels as "malicious," confusion resulted for two centuries from the gradual changes in the meaning ascribed to malice in connection with defamation. By the end of the nineteenth century, however, malice remained important principally when a defense of "privilege" was interposed. If malice is proved in such cases, the defense of privilege fails.

Ordinarily privilege is a defense to both civil and criminal proceedings. An example of absolute privilege is that attaching to parliamentary papers under the act of 1840 (3 & 4 Vict., c. 9) which was passed in consequence of the denial of absolute privilege by the courts in the famous case of Stockdale *v.* Hansard. "Qualified privilege" will cover a large variety of cases where defamatory statements, true or false, have been made in the course of business, family or personal communications. References by employers and bankers are common examples. The defense of privilege in such cases is available only if the statements were made by and to persons having an interest in the subject matter of the communication, and the privilege can be destroyed by proving malice.

The rise of large newspapers brought special problems, for their power of inflicting injury was enormous, although the conditions under which they were produced made it difficult for them to

take precautions. Lord Campbell's Libel Act allowed the publisher of a libel to show in mitigation of damages that he had published an adequate apology; and in criminal cases newspaper owners were allowed to show that a libel was published without their authority or consent and that it was not due to their want of care. Journals still, however, incurred heavy risks. For example, a fair and accurate report of proceedings in town councils and other public meetings might contain defamatory matter. The Newspaper Libel and Registration Act of 1881 gave injured persons the means of discovering the true owner of a newspaper from the register and gave the paper some protection in reporting public meetings; this was enlarged by the Law of Libel Amendment Act of 1888 into a qualified privilege which would fail only if the paper had acted with malice or refused to print a reasonable letter of contradiction or if the matter was not of public concern. The privilege long attaching to reports of judicial proceedings does not cover "obscene" matter unless in professional or scientific periodicals or books.

Literary, dramatic and artistic criticism has long been a prominent feature of journalism, whose province in fact extends to all matters of public interest. During the last century the press has greatly gained in liberty by a line of decisions which recognize "fair comment" as a defense. Such matter must be really comment and not imputations of fact; such comment, although it may be strongly expressed, must be "fair," which does not necessarily mean that the comment must be unprejudiced or well informed; and it must be on a matter of public interest. This last point is one for the judge to decide. Certain sections of the press invade also the privacy of persons in the public eye in ways which are most reprehensible, although perhaps not illegal. The growing need for the protection of the right to privacy is at present very imperfectly met by the law of libel.

Libel and slander have so far been considered in connection with injuries to reputation and attacks upon government, morals and religion; but the term slander also covers false statements causing damage which are directed not against a person's reputation but against his property. It is a curious result of the early date of this development that the word slander in this connection covers written as well as spoken words. The earliest form was slander of title to land, whereby the owner lost a sale which was pending. Cases of this sort occurred late in the sixteenth century; and a century later the principle was extended to other situations, notably advertisements, which at that time were largely in the nature of vigorous disparagements of the wares of rival traders.

The American law of defamation in the main closely resembles the English law. Most jurisdictions took the common law as a basis and enacted modifying statutes similar to the English. The statutes which have attempted definitions of libel and slander have not fundamentally altered the common law concepts of the wrongs. The principal divergence from English law is the extent to which different states admit truth as a defense. New York enacted a statute for this purpose as early as 1805. In many states the class of slanders actionable per se has been widened to include not only imputations of female unchastity but also such other imputations as those of adultery, impotence, incest and perjury.

In France during the Middle Ages the local custumals punished defamation in a great variety of ways, although at first insult was not distinguished from defamation. Under an ordinance of 1651 the printing of a defamatory libel was punished by whipping and on a second offense with death. In 1757 seditious and irreligious libels were made capital. Printing in general was strictly controlled by the crown by a system of licensing which, abolished during the revolution, was restored during the Napoleonic regime and lasted with interruptions until 1828. The French press, which had taken a large part in the revolution, soon discovered its enormous powers. In 1819 therefore a law was passed to protect individuals against press libels by enacting that truth could not be pleaded in defense. In 1850 it was enacted that all articles of opinion must be signed; and although this law has since been repealed, political articles are still usually signed in the French press. The modern law rests on the act of July 29, 1881, which is virtually a code of defamation and press law and has had enormous influence in European countries. The law imposes the obligation of printing conspicuously a rectification by an official whose acts have been misrepresented or a reply by a private person who considers himself defamed. Defamation is distinguished from insult, and malice is presumed unless the defendant can establish his good faith. Defamation of the dead is punished only when it is used as a means of attacking the living. Truth is a defense when the matter concerns officials and persons in a public position, but no attack on a person's private life can be

justified by the claim that it is true. Statements made at the trial must not be reported in the papers, so great is the concern for privacy. Indeed the principle has been frequently stated in France that there are walls around a person's private life.

The Germanic laws of the early Middle Ages contained schedules of fines for defamation. The law of the later Middle Ages developed means of apology and public retraction, which did not entirely disappear with the reception of the Roman law. The law of the Pandects developed especially the Roman doctrine of the pasquinade. The German regional laws from the sixteenth to the eighteenth century for the most part treated defamation as a private delict. The modern German law is similar to the French. Yet although there is a press law, the offenses of insult and defamation are not defined therein but in the general penal code. A more important difference is that truth is regularly admitted as a defense unless the person defamed is deceased.

The Italian penal code which came into force in 1931 contains the most recent continental legislation on defamation. Under the general heading of "crimes against honor" insults addressed to a person incur fine or imprisonment, and the penalty is increased if specific facts were imputed or if other persons were present. Statements injurious to reputation are similarly punished and the penalty is increased if the defamation is printed, if specific facts are imputed or if the injured party is a judicial, governmental or corporate person. Truth is no defense unless both parties agree to submit it to a "court of honor." Relatives may prosecute for the defamation of a deceased person. Defamatory documents may be suppressed, and damages may be awarded when the court sees fit. Provocation by the injured party himself will excuse defamation committed in a moment of anger. Offenses by the press against the state, religion and morals are set out at length.

Thus while the continental law of defamation represents a unified category of wrongs, it contains distinctions of gravity. The provision that permanence of form aggravates a defamation is very common in continental codes. The publicity of a defamation is also very generally taken into consideration. The regard for honorific motives derives from Germanic conceptions, not from the later Roman law, to which such motives were alien. The persistence of the system of licensed printing in continental countries well into the nineteenth century had a particularly great influence upon the development of their law of defamation. The special continental treatment of the defamation of public officials with respect to their official acts is partly matched by the Anglo-American law of contempt of court, which provides a special protection for judges. Finally, the disparagement of a rival trader's wares, which is still part of the Anglo-American law of libel and slander, is placed more logically by those continental countries which follow the German system within a statutory system of unfair competition.

THEODORE F. T. PLUCKNETT

See: FREEDOM OF SPEECH AND OF THE PRESS; CENSORSHIP; TORTS; UNFAIR COMPETITION; TREASON; LESE MAJESTY; CONTEMPT OF COURT.

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LIBERAL PARTIES. *See* PARTIES, POLITICAL, sections for separate countries.

LIBERALISM. In its larger sense liberalism is a deep lying mental attitude which attempts in the light of its presuppositions to analyze and integrate the varied intellectual, moral, religious, social, economic and political relationships of human society. Its primary postulate, the spiritual freedom of mankind, not only repudiates naturalistic or deterministic interpretations of human action but posits a free individual conscious of his capacity for unfettered development and self-expression. It follows therefore as an obvious corollary in the grammar of liberalism that any attempt on the part of constituted authorities to exert artificial pressure or regulation on the individual, in his inner and outer adjustments, is an unjustifiable interference, a stultification of his personality and initiative. Against such coercive interference, whether in the moral, the religious, the intellectual, the social, the economic or the political sphere, liberalism has consistently arrayed its forces.

Although liberalism in this larger sense is a complex pattern of interrelated strands which cannot be disentangled, the term soon came to acquire a more precise connotation as the political implications of liberalism were abstracted and given primary emphasis on the ground that political liberty constituted a prerequisite, and necessary guaranty, of liberty in its broader reaches. At an early stage of its development therefore the forces of liberalism concentrated on the crucial problem of limiting the interference of the state and of transforming state policy into a vehicle for promoting the liberties of individuals and groups.

In the process of formulating its libertarian ideals and objectives political liberalism gradually evolved an explicit system and ideology and, as it drew near to the parliamentary arena, a more specific program. With a view to translating this program into effective action liberalism was called upon to set up formal agencies which should be, on the one hand, sufficiently cohesive to prosecute a decisive policy and, on the other, sufficiently deliberative to conform to the liberal ideal of a harmonious interplay of opinion, free from coercive pressure on the individual. This compromise was worked out in its most effective form in the liberal parties which during the first half of the nineteenth century came to assume throughout Europe and America the role of parliamentary watchdogs over the activities of the government, attacking any interference with the rights of the individual citizen and gradually extending and embodying in legislation the liberal program. From a principle of social criticism liberalism had become actual governmental practise, and in the process its original ideology had inevitably undergone a certain transformation. In their new role the liberal parties made it their task to eliminate conflicts between authority and liberty. To this end they endeavored to limit as far as possible the sphere of their own influence with a view to avoiding interference with the free play of individual and social forces, to initiate constitutions and laws for the sake of safeguarding the rights of liberty and, finally, to utilize their authority for increasing the number and influence of untrammeled individuals and associations. It is through the work of these parties that the liberal states of the nineteenth century assumed shape and solidity. With their institutions of public law, their constitutions, their systems of checks and balances, these states represented both a permanent curb on governmental activity and an embodiment of the continuity of liberal traditions in the various countries. Thus it came about that although there were frequently periods in which neither the parties nor the governments were formally liberal, nevertheless liberalism itself survived in the institutions of state as well as in political customs which sustained and in turn were sustained by the state.

Viewed in this broader light political liberalism may be said to embrace party ideologies and programs, the work of governments in the interests of social justice as well as the social, juridical and political institutions which form the basis of liberal states. It thus becomes possible to analyze more realistically the contrast which is usually pointed between liberalism and conservatism. The two terms are not essentially antithetic, as is evidenced by the fact that a liberal party upon attaining power inevitably dedicates itself to the conservation of the liberties already

won. The liberal and the conservative do reveal, however, a basic difference in mental outlook. Liberty like every spiritual activity can be preserved only by means of new acquisitions, but the conservative temperament runs the risk of making it overrigid, of converting it into a sacrosanct possession and hence into a privilege; so that whatever the origin of the conservative, he eventually becomes an advocate of the status quo, endeavoring to reinforce it and in this way to increase the privileges of the already privileged classes. The liberal, on the other hand, if he is faithful to his principles, keeps in mind the future as well as the past and sponsors innovations and reforms. Carried to its ultimate conclusions liberalism gives rise to radicalism with its tendency to make a *tabula rasa* of the past and its attempts to introduce into human society a new order based on reason. In contradistinction to the extremist tenets of conservatism and radicalism liberalism represents a flexible equilibrium, which while recognizing freedom as an expansive force tending toward the future values the historical continuity of the actions through which the human spirit gradually realizes itself. Only through these actions, it is felt, can both the individual and society acquire that self-mastery capable of finding a lasting embodiment in new achievements. Liberty as understood by the liberal is attained not by the man who forever starts his life anew but by him who brings to bear upon every action of his life his whole personality.

In European political liberalism the conservative strains of historical tradition have been fused with the progressive strains of abstract rationalism. British liberalism up to the eighteenth century was concerned primarily with conservation, while French liberalism, as culminating in the revolution, proceeded rationalistically, indifferent on the whole to its political heritage. But under the influence of a group of radical ideologists saturated in continental rationalism British liberalism in the nineteenth century came to emphasize progress at the expense of conservation; while French liberalism, on the other hand, absorbed many historistic and traditional elements as a result of a closer study of the British model. In this way the distance between the two forms, which was originally considerable, gradually diminished.

It is characteristic of the traditionalism of the English liberal spirit of the seventeenth and eighteenth centuries that it was nourished not by a rational definition of the concept of liberty but rather by a slow and persistent acquisition of liberties—a gradual process of accretion, organic in character. The English, feeling no need to formulate their liberties in a system or to sanction them by a constitution, entrusted their defense to the forces of custom and habit rather than to a rational and abstract doctrine of popular sovereignty. Thus the vindication of liberties devolved upon succeeding social and economic groups which struggled for political dominance rather than upon a single homogeneous class which revolted against privilege under the banner of natural, universal laws.

The unusual vitality of the British nobility, which since early feudal days had constituted itself the perennial champion of liberties and law, may be accounted for by the conscientiousness with which it performed the functions entrusted to it. Actively engaged in the promotion of agriculture and trade, in the administration of justice, in local and parliamentary government, it remained throughout the eighteenth century a dynamic force—a striking contrast to the parasitic nobility of France with its monopoly of privileges divorced from function. When the industrial revolution of the eighteenth and nineteenth centuries conferred a preponderance of power on the bourgeoisie it was turned against the aristocracy not in order to undermine the existing structure, as was attempted in France, but in order to realize for itself a greater degree of participation so as to exploit in its own interests the advantages of traditional liberties. The struggle between the two classes meant therefore not a sudden discontinuity in historic life but a development of one and the same system. Similarly at a later stage the proletarian movement, although inspired by different ideals, pursued and to a limited degree realized its aspirations in the spirit of traditional liberalism, despite the fact that this moderation involved a serious loss of impetus and entailed a moderate program as compared with other countries.

This sense of continuity has on the whole dictated the policy also of the British crown, which beyond a few sporadic outbursts of absolutism—as, for example, on the part of the Tudors and Stuarts—was never in a position to ignore the claims of its more progressive subjects. This royal moderation is attributable primarily to the fact that the vital needs of protection and external defense, which on the European continent strengthened the state at the expense of the liberties of its citizens, were less compelling in the case of an insular people protected by the sea.

The chief instrument of oppression, a readily available armed force, did not exist. The navy, the main defense of England, generated, on the contrary, a spirit of intense individualism and by its very sphere of action was able to escape centralized supervision, while the fact that the army was engaged almost constantly in continental wars tended to eliminate the possibility of armed interference with liberties at home. The two English revolutions were therefore attempts not at undermining the institution of the crown itself, as was the case in France, but rather at curbing the excessive ambitions of the king, who constituted the momentarily disruptive element, and at bringing the crown into line once more with the broader evolutionary development of the life of the country.

Quite different was the character of liberalism in France, which typified rather clearly the political ideals of a continental country. Since the beginning of the modern period France had found herself hemmed in between two great monarchies, Spain and the Holy Roman Empire. The necessity of a continual struggle for existence soon brought the realization of the importance of concentration of forces and also of the need for the overthrow of feudal disorder by a strong centralized monarchy. Although the monarchy did not formally attack the privileges of the feudal classes it degraded their holdings to the role of free appanages and in this way undermined the prestige of the nobles, especially since the public services performed by them gradually dwindled in number. Centralization and leveling were the two most effective weapons of the monarchy and in both programs the rising bourgeoisie heartily concurred. But as the bourgeoisie became richer and more influential, as it acquired, with culture, confidence that it constituted the true generality of the nation, the heedless absolutism of the monarchy became increasingly intolerable. Dissatisfaction became keener with the growing realization that the leveling program had stopped halfway and that the remaining feudal privileges of the aristocracy continued with impunity to gall the shoulders of the bourgeoisie despite the growing importance of its economic functions. With a mounting sense of aggrieved dignity the impatient middle class, convinced gradually of the impasse confronting it, turned after a century of sporadic pressure to revolution; and when the king after a period of vacillating compromise threw his weight into the scales of reaction, no sentiment of tradition was vital enough to save the institution of the crown from the same extermination which had earlier befallen the aristocracy.

Proceeding from the rational principles of liberty and equality the French revolutionary liberals evolved a logically coherent mechanism for translating these principles into practise. This mechanism, derived partly from Montesquieu's rationalistic misinterpretation of essentially traditional and empiric features of the British constitution, was to a larger extent the outgrowth of the concept of equality as formulated by Rousseau. Whereas liberty involves differentiation and division, equality entails leveling and centralization. Liberty and equality, which find their embodiment respectively in liberalism and in democracy, are thus complementary and at the same time antithetical: complementary, inasmuch as absence of equality, at least equality of opportunity, degrades liberty to the level of exclusive and therefore oppressive privilege; antithetical, inasmuch as equality is conducive to indiscriminate leveling and indirectly to excessive centralization—to the detriment of such bulwarks of liberty as local associations and institutions. Since their first encounter in the heat of the French Revolution, liberalism and democracy have confronted each other in a variety of involved situations. The liberal tendencies of the movement of 1789 were gradually submerged under the democratic wave of 1793, and the latter ignoring the restraining counsels of liberty degenerated into the absolutism of the Convention and the Terror. Eventually, however, as a reaction to the horrors of the Jacobin dictatorship there reemerged the original concern for liberty. The first sustained attempt to solve the problem of restraining democratic excesses through a moderate liberal policy was made by Napoleon. By inaugurating a regime of enlightened Caesarism and especially by his opportunistic codifications he granted to the entire nation civil freedom and security in exchange for political freedom. But his increasingly arbitrary acts and usurpations under the pressure of war revealed to the people the precariousness of civil liberties unguaranteed by political rights and liberties. Accordingly in the nineteenth century, especially after the Restoration, the demands of French liberalism were formulated—notably by Constant, Royer-Collard, Guizot and de Tocqueville—in terms of constitutional guaranties capable of defining and delimiting the authority of the state in the interests of the individual citizen. At the outset chief emphasis was placed on written constitutions, elaborate systems of

checks and balances, minority representation and other devices for counteracting concentration of power, whether emanating from a privileged aristocracy or, as was more threatening, from a democratic majority invoking the new doctrine of popular sovereignty. But as the inadequacy of these devices became more and more apparent, the attention of the Restoration liberals was drawn increasingly to the Anglo-Saxon political system with its reliance on the forces of unwritten tradition and custom, which although they had aroused the scorn of prerevolutionary rationalists were now revealed in their true light as the mainspring of British local government. Thus decentralization came to assume in the eyes of the French political theorists a preeminent importance as the chief bulwark against absolutism, as the distinguishing mark of a free country. Confronted with the problem of freshening the currents of native liberalism with waters drawn from the English source, they were brought, however, gradually to realize their essentially paradoxical position in attempting to transplant suddenly a vigorous native growth into a different historical climate—a climate moreover particularly uncongenial since the leveling policy of the monarchy had sporadically endeavored for centuries to eliminate inequalities of privilege and the revolution had completed the process. The fusion of the two forms of liberalism therefore became a tendency rather than an accomplished task.

On the other hand, British liberalism of the eighteenth century, permeated as it was with aristocratic elements, was able to resist the impact of the ideas of the French Revolution and managed to direct the awakening popular consciousness into channels of patriotism and hatred for the hereditary enemy. But the protracted Napoleonic wars and the oppression inevitably entailed in war tended to make even more rigid the feudal structure of the ruling class. Simultaneously the new manufacturing class generated by the industrial revolution was becoming increasingly resentful of the rule of the agrarian oligarchy. In conformity with the nature of the English people, however, this resentment expressed itself not in a revolutionary outburst and in a proclamation of general principles of liberty but in a rather precise and programmatic formulation of particular demands calculated to wipe out certain restrictive privileges and regulations. The most serious of these hindrances to the expansion of industrialism consisted in the survival of feudal regulations on manufacture, which cramped the initiative of the entrepreneur and prevented sorely needed readjustments in the sphere of economic organization and administration. A second serious hindrance was the tariff policy designed by the landed aristocracy to increase its revenues. The resulting rise in the price of agricultural products led to a higher cost of labor and of manufactured articles and consequently hindered exportation. Economic liberalism, or the ideal of free trade, accordingly expressed itself in two closely related demands: internal freedom of industry and external freedom of exportation and importation. Both aspects were subsumed under the single formula of free competition, which was hailed as a stimulus to individual initiative and as a vehicle for natural selection.

This economic liberalism, which was formulated with scientific precision by the classical school of English economists, differs from political liberalism as the species differs from the genus. But if its scientific formulation is independent of political contingencies, its practical realization presupposes the work of parties and governments. Thus its proponents from the beginning of the nineteenth century were forced to learn the practical lesson that it would remain a dead letter without a political reform capable of limiting the preponderance of the landed aristocracy in the government and of assuring political recognition to the bourgeoisie. The transformation of the economic into a political program was the work of numerous radicals from Bentham to Cobden, who imparted to the liberal ideology a rationalistic tinge, partly under the influence of the scientific temper of economic liberalism, from which they derived their inspiration, partly through the repercussions of French political rationalism. There was thus engendered a process the opposite of that which was operative in France; the traditionalistic liberalism of the eighteenth century with its open recognition of privilege became divested of many of its historically conditioned accretions and assumed a more rational and systematic form. The ambitious designs of the radicals, curbed by the tenacious forces of tradition, fused with the older Whiggism to form a composite liberalism in which the old and the new were gradually integrated and harmonized.

The interplay of the French and English types of liberalism constitutes the mainspring of the liberal movement in the other nations of Europe and America. The prevalence of the one or the other type was determined by the peculi-

arities of local complications and problems, arising chiefly from nationalistic currents. In regard to American liberalism two historical interpretations have been advanced by recent scholarship. The one in regarding the American Revolution as an antecedent of the French Revolution and of the Declaration of the Rights of Man assumes that American liberalism derived its inspiration from an ideological and rationalistic source. According to the second and more tenable interpretation the animating spirit of the American Revolution had its source in the traditionalism and legalism of the Anglo-Saxon temperament. According to the latter hypothesis the English colonies were induced to rise against England not by a desire to create a new order in conformity with freedom and equality but by the need for reaffirming traditional liberties against the usurpations of the British crown. Viewed thus the entire movement was a reaffirmation of the classical thesis of Burke, who was as courageous in his defense of American independence as he was firm in his repudiation of the French Revolution. Taxed with inconsistency, he rationalized his position by contrasting the conservative character of the American Revolution, aimed at vindicating a historic Anglo-Saxon custom against English violation, with the subversive rationalism of the French Revolution.

The affinity between English and American liberalism may be attributed to common ethnic origin as well as to geographical isolation and comparative military security, which were conducive in both countries to political and administrative decentralization and therefore to a spread of local self-government. On the other hand, however, there were notable historical differences, such as the absence in America of a hereditary aristocracy and an established church, which rendered the frontier society more open to democratic experiments, and the rationalistic doctrine of equality, which was so much more in evidence in the American bills of rights than in traditional English liberalism. Moreover the cardinal fact that American liberalism resorted to revolutionary means gives additional validity to the historical thesis which interprets the American Revolution as an antecedent of the French.

If on the whole the traditionalistic spirit prevailed in the earliest phase of American emancipation, it tended more and more to fuse with French rationalism, as is evidenced in the ideologies of such revolutionary leaders as Lafayette, Franklin and above all Jefferson, whose preeminent role in American political life integrated the two different currents of revolutionary thought. Jefferson's early outlook, as embodied in the Declaration of Independence, is in the main saturated with British traditionalism; but during his years as ambassador to France he became deeply versed in the prevailing rationalism of the prerevolutionary salons and on his return to the United States attempted to compress the currents of American liberal thought and practise into the French mold.

In Germany theoretical formulations of liberalism were the work of metaphysical philosophers who translated the ideas and practise of the French into systematic and organic forms more congenial to the German mind. Kant stated the principle of individual liberty and of a society of free individuals, while Humboldt traced the limits of state authority and interference. A more practical stimulus to German liberalism was the tradition of local self-government which had flourished in the German cities since the Middle Ages, a tradition closely akin to that of England. A third stimulus, which had made itself felt ever since the wars of liberation against Napoleon, was the fusion of the ideals of national unification and liberty. These three currents of German liberalism converged in the Revolution of 1848 and in the Frankfort Assembly. In the subsequent period, however, there was a violent antiliberal reaction attributable primarily to the opposition of Austria—which frustrated a union of German states based on free and mutual consent—to the militaristic tradition of Prussia and to the gradual domination of political thought by the absolutistic formulations of Hegel and Stahl. German unification, divorced from libertarianism, was achieved instead by military victories and Prussian hegemony.

Nineteenth century Italian liberalism had many affinities with the liberal movement in France, because of the ethnic and cultural bonds between the two countries as well as of their intimate historical contacts. There were of course other elements, drawn, especially by Cavour, from Manchesterian liberalism and from those liberal Catholic currents which aimed at making a modernized papacy the unifying center for the Italian states. But of much greater historical importance was the part played by nationalistic demands for independence from Austria and for a unification of the peninsula under a common regime of liberty. By declaring war against Austria and by proclaiming a constitutional order Piedmont assumed the leadership

and successfully set about the solution of the two problems in accordance with the aspirations of the best elements in the nation. In contradistinction to the German experience, however, unification did not entail the hegemony of the dominant province. Instead Piedmont was quietly assimilated into a broader national union, the capital being transferred from Turin to Florence and then to Rome. Unification received its effective sanction through a common liberal regime administered by a Parliament elected by the entire nation.

In the second half of the nineteenth century the principles of liberalism prevailed, with varying degrees of effectiveness, in practically all civilized countries. Where absolutistic and militaristic traditions were more tenacious, the political forms of liberalism were mutilated and attenuated, as under the Second Empire or under Bismarck; where industrial requirements imposed tariff barriers, the doctrine of free trade was held more or less in check; and where the churches were able to preserve at least a part of their privileges, religious freedom was limited. But freedom of conscience, freedom of association and freedom of the press were everywhere recognized in their main outlines. The civilized world presented the spectacle of a free play of forces limited only by self-imposed restraints and by the exigencies of community life as embodied in a non-authoritarian state. The social technique of liberalism found its support in the middle classes, both industrial and agrarian. The hereditary aristocracies remained on the whole unsympathetic, convinced that too great an emphasis on liberty threatened their economic privileges and social prestige. The emerging labor class, on the other hand, did not possess a sufficient degree of economic independence to make it sympathetic to the doctrine of individualistic self-reliance, which seemed to offer slight prospect of escape from the miseries of the factory system. But the predominance of the middle class under the banner of liberalism did not signify, at least in principle, the hegemony of one class over all others. The bourgeoisie opened wide its doors, parading as the "general class," emphasizing common rights rather than privileges and extolling the doctrine of free development of all the forces within the community. Its authority as a leader corresponded to the universality of its functions.

At the same time the very consolidation of liberalism ushered in a decadence which became especially marked and serious toward the end of the nineteenth and during the twentieth century. The reasons for this decadence are manifold. Above all the attainment of power by the bourgeoisie brought about a situation inherent in every exercise of power: its liberal ideals spent their momentum. If as a champion of liberty this class was full of energy and fervor, as soon as it began to enjoy peaceful possession its ardor was dampened and gave way to conservative calculation and habits of mind inconsistent with the dictates of liberty. If in principle it claimed to exercise a mandate for the entire population, in reality it began to rule chiefly in its own interests and to transform liberties into rigid monopolistic privileges. These tendencies became especially marked under the presence of rising proletarian agitation which forced the group in power to assume increasingly defensive tactics. The reluctance on the part of the bourgeoisie to extend political rights to the people, its vigorous opposition to any measures of social and educational welfare which seemed to interfere with the freedom of enterprise in factories and with individual initiative in society, the creation of the new "baronies" of industry, finance and land—these tendencies were so many checks on the initial liberalism. But even apart from this widespread class selfishness and particularism the general trend of economic life in the nineteenth century favored the appearance of antiliberal forces. When industries were first born in England the best means for furthering their development was through freedom of initiative and through a competition untrammeled by outside chains. Manchesterian individualism was an appropriate expression for this first dynamic phase of expansion. But as soon as industry reached maturity, new needs began to make themselves felt. It became necessary to organize enterprises on larger and larger scales—thus limiting the initiative of the constituent elements—and also to meet growing international competition by protectionism. In defense against concentration by capital labor inaugurated its own program of concentration as the only means for bettering its condition. Both types of concentration assumed dictatorial forms, and the conflict between the two expressed itself in sporadic revolutionary outbursts. Liberalism thus found itself hemmed in between two opposed forces having in common only a basic antipathy to liberal tenets and technique. Individualism proved to be more and more inadequate for satisfying the new organic needs of society. While the political forms of liberalism still remained intact, the conflict for

power between the forces of plutocracy and those of economic democracy threatened to distort them beyond recognition. The concept of a free sphere of activities with an impartial police state gave way to the concept of a state which should be conquered as a vehicle for the attainment of class objectives. Under this double set of forces the jurisdiction of the state was gradually extended far beyond the boundaries surveyed by liberalism. The new state, claiming for itself an ever increasing number of functions which formerly had been the jealous possession of individuals, substituted a centralized bureaucracy for free initiative and by assuming the role of arbiter in social conflicts interfered with the spontaneous play of forces and assured dominance to the holders of power.

Despite these tendencies liberalism has displayed a marked degree of persistence. The very fact that liberal political forms continued to exist often mitigated the conflict of economic groups by transferring in many cases the struggle from the immediate economic sphere, with the threat of head on collision in public clashes, to the scene of parliamentary deliberation, with its greater amenities and traditions of compromise. Moreover despite the element of dictatorial dogmatism a certain amount of liberal ideology seeped down to the rank and file of the labor unions and was thus disseminated among the masses. On the other end the ruling groups often proved themselves sensitive to the needs of the new age. Suffrage was extended, numerous measures of social welfare were carried out and labor unions were given official recognition. These new tendencies were paralleled in the theoretical and ideological realm by a transition from the narrow Manchesterian individualism to a more organic liberalism, as formulated most systematically by T. H. Green and L. T. Hobhouse. The new liberal organon resolves the antinomy between individual liberty and authoritarian organization and directs its major energies to building up spontaneous organizations of individuals. It recognizes that labor unions, far from interfering with freedom of contract, as was believed by the individualists of the old school, are indispensable vehicles whereby the workers, who would be crushed in isolation, can combine to enforce their demands on employers.

These first manifestations of a liberal renaissance were cut short by the World War, which with its hegemonic ideals, its regime of command and subjection, blighted the spirit of liberty. Although in the post-war period the menace of communism, which has forced the capitalistic countries to assume rigid positions of defense, as well as the ill feelings engendered by economic and political nationalism has still further aggravated antiliberal forces, it is possible that extreme oppression may once again generate new stimuli to liberty.

GUIDO DE RUGGIERO

See: LIBERTY; EQUALITY; DEMOCRACY; INDIVIDUALISM; NATURAL RIGHTS; CIVIL LIBERTIES; RADICALISM; RATIONALISM; PROGRESS; FRENCH REVOLUTION; PARTIES, POLITICAL; LAISSEZ FAIRE; ECONOMICS, section on CLASSICAL SCHOOL; FREE TRADE; CONSERVATISM. See also INTRODUCTION, sections on RISE OF LIBERALISM and THE REVOLUTIONS.

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LIBERTY. The basic idea of liberty as a part of the armory of human ideals goes back to the Greeks and is born, as the funeral oration of Pericles makes abundantly clear, of two notions: the first is the protection of the group from attack, the second is the ambition of the group to realize itself as fully as possible. In such an organic society the concept of individual liberty was virtually unknown. But when the city-state was absorbed by the idea of empire, new elements came into play. Stoicism especially gave birth to the idea of the individual and made his self-realization the main objective of human endeavor. Christianity added little to this notion by way of substantial content; but it added to its force the impetus of a religious sanction, not improbably the more powerful because Christianity was in its original phase essentially a society of the disinherited, to whom the idea of the eminent dignity of human personality as such would necessarily make an urgent appeal. In this stage it is difficult to dissociate the idea of liberty from that of equality, with which it is frequently intertwined. But as Christianity became the triumphant religion of the western world, the idea of equality became largely relegated to the theoretical sphere; and the liberty in which the church became interested was that of ecclesiastical groups seeking immunity from invasion at the hands of the secular power. In this aspect the liberty it sought was in essence indistinct from the liberty claimed by other groups in the mediaeval community. For until the end of the fifteenth century, roughly, the defense of particular liberties against invasion by external authority was the work of a functional group, such as the barons of Runnymede or the merchants of London. In this period liberty may be said to have resolved itself into a system of liberties or customary negative rights which were bought and sold between the parties for hard cash. Custom became codified into law, and the invasion of custom came to be taken as a denial of liberty. There is little that is universal about such a conception of liberty; the group is largely defending itself from attack without undue regard to the interest of other groups. Thus in mediaeval England liberty had no meaning for the villein; and it is hardly illegitimate to argue that those who fought for liberty when they wrung Magna Carta from King John were good syndicalists whose minds were largely bounded by the narrow demands of a small group within the realm. Liberty has been as often the rallying cry of a selfish interest intent upon privilege for itself as it has been the basis for a demand which sought the realization of a good wider than that by which it was itself affected. It is therefore not unfair to describe the mediaeval idea of liberty as a system of corporate privileges wrung or purchased from the dominant power and affecting the individual less as himself than as a member of some group in whom those privileges cohere.

Philosophically no doubt restraint upon freedom of behavior has always been resented as an invasion of individual personality. But historically the best way of regarding the substance of liberty in the modern period as well as in the mediaeval is to realize that the new elements which enter into its composition at any given time have almost invariably been rationalizations of particular demands from some class or race or creed which have sought a place in the sun denied to them. Thus the history of religious liberty has been the demand for toleration by group after group of dissidents from recognized creeds, few of which have been willing to admit the claims of their rivals to toleration. So again the history of the franchise has been the demand of men for the right to share in political power, while many of those to whom the right has been granted have had no difficulty in urging that it was unwise or unjust to admit the next claimants to their place; Macaulay, who urged with passion the enfranchisement of the middle class, opposed not less urgently the grant of universal suffrage on the ground that it would necessarily dissolve the fabric of society.

The Reformation may be said to have been the most important factor in revitalizing the stoic doctrine of the primacy of the individual and in giving a new emphasis to individual rights as a separate and distinct subject of liberty. The breakdown of the *republica christiana* gave birth to new religions; these by demanding toleration

gave birth, even if painfully and in doubt, to the idea of liberty of conscience. The centralization of monarchical power consequent upon the breakdown of feudalism made political liberty more abstract and general than it had previously been; and the discovery of the printing press gave to the idea of freedom of expression within the general concept of political liberty a valuable concreteness which it had never before possessed. Nor is this all. The voyages of discovery synchronized with the emergence of a capitalist economy, and the importance given by the character of this economy to the individual entrepreneur made the problems of civil and economic liberty take on a new sharpness of form. By the time of Locke the idea of the individual as the embodiment of certain natural and imprescriptible rights which authority is not entitled to invade had become a commonplace of political speculation.

In a sense the emergence of the Reformation state on the ruins of the mediaeval commonwealth meant the substitution of the idea of the nation for the idea of the group; and it would not be illegitimate to argue that until the maturity of capitalism in the nineteenth century the struggle for national liberty proceeds along parallel lines with that of individual liberty. The two become until the threshold of our own day the two supreme embodiments of that passion for self-realization which has always lain at the root of the idea of liberty. The nation rejects the subordination of itself to an external authority just as the individual seeks to define for himself spheres of conduct into which external authority is not entitled to enter. Each seeks to make its claims as absolute as possible. The one for that end assumes the panoply of a sovereign state, thereby recognizing no superior; the other attempts to define the limits of governmental interference in terms of wants he discovers as brooking no denial. The history of the search for national liberty resulted in a chaos of sovereignties which stood in sharp contrast to that unified economic life made possible by scientific discovery; and it was clear that the history of the twentieth century would be largely occupied in bringing order into the anarchy to which the struggle for national liberty had given birth.

Something not dissimilar occurred in the history of individual liberty. So long as it was conceived as a body of absolute rights inherent in the individual and entitled to be exerted without regard to their social consequences, liberty was divorced from the ideas of both equality and justice. The individual became the antithesis of the state; and liberty itself became, as with Herbert Spencer, a principle of anarchy rather than a body of claims to be read in the context of the social process. The reason for this evolution is clear. The body of ideas we call liberalism emphasized the undesirability of restraint, because those who gave it birth had mainly experienced the state as an organization interfering with the behavior they regarded as necessary to self-realization. Because of this they sought to reduce the state to the role of a mere guardian of order, keeping the ring in a vast competition of individual strivings of men who received in the social process the reward to which their effort and ability entitled them. Laissez faire was assumed at once to maximize self-realization on the one hand and on the other to serve the state by selecting the fittest for survival. Historic experience and biological principle seemed to the Victorian age to canonize the classic antithesis of individual and state.

The conception of an individual whose liberty was a function—the maintenance of order apart —of the weakness of the state was intelligible enough in its period. It failed to take account of the fact that the differences between men are too great under such conditions to make self-realization possible for more than a few. Liberty in a laissez faire society is attainable only by those who have the wealth or opportunity to purchase it; and these are always a negligible minority. Experience accordingly drove the state to interfere; and the liberal state of the nineteenth century was gradually replaced by the social service state of the twentieth. This may be described by saying that it again joins the ideal of liberty to that of equality, and this in the name of social justice. As the claims of liberty broke down the privileges of birth and creed, so with obvious logic they began an assault upon the claims of wealth also. The state was increasingly driven to widen its functions to mitigate the consequences of that social inequality to which the system of absolute liberty gave rise. Education, public health, provision against unemployment, housing, public parks and libraries are only a few of the outstanding services it was driven to organize in the interest of those who could not be expected to help themselves. Democratic agitation, which from 1600 to about 1870 had been occupied with the removal of barriers upon individual action, after 1870 began to press for the deliberate creation of equalitarian conditions. It has become clear,

in a word, that the idea of liberty depends upon the results of the social process at any given time; and it is against that background that its essential elements require analysis.

Liberty may be defined as the affirmation by an individual or group of his or its own essence. It seems to require the presence of three factors. It seeks in the first place a certain harmonious balance of personality; it requires on the negative side the absence of restraint upon the exercise of that affirmation; and it demands on the positive the organization of opportunities for the exercise of a continuous initiative. The problem of liberty has always been the prevention of those restraints, upon the one hand, that men at any given period are not prepared to tolerate and, upon the other, the organization of those opportunities the denial of which results in that sense of frustration which when widely felt leads to imminent or actual disorder.

So regarded, two things are clear about liberty. While its large outlines may have a fairly permanent character, its particular content is always changing with the conditions of time and place. To one age the demand for liberty may express itself in an insistence upon religious toleration; to another political enfranchisement may be its essential expression. This serves to remind us that liberty is always inherent in a social process and is unintelligible apart from it. Liberty therefore must always be conceived, if its philosophy is to be an adequate one, as related to law. It can never be absolute; some restraints are inevitable, some opportunities must be denied, simply because men have to live with one another and move differently to the attainment of antithetic desires. So closely moreover is this network interwoven that we cannot ever seek permanently to define a sphere of conduct within which freedom of action may be defined as liberty. For while we may claim, to take an obvious example, that there is unlikely to be liberty in any community in which there is no legal right to freedom of speech, we cannot maintain that an absolute right to say what he pleases is or should be inherent in any person; it is not, as Mr. Justice Holmes has said, a denial of freedom of speech when a man is prohibited from crying "Fire!" in a crowded theater.

Liberty, in a word, has to be reconciled with the necessities of the social process; it has to find terms upon which to live with authority. Those terms have never been absolute or unchanging; they have always been a function of the historic environment in some given time and place. And that environment has always given birth to its own system of ideas, to which it has contributed some special emphasis in the notion of liberty, born of its peculiar conditions. That emphasis is always seeking its translation into an idea of law, whether by way of negation or affirmation; and the relation of authority to the substance of this idea is usually dependent upon what those who exercise authority consider will be the effect of the translation upon the order they seek to maintain. Trade unions demand the right to combine; authority admits that right or stigmatizes it as conspiracy, according to whether it considers the admission compatible with the way of life it seeks to uphold. A religious group demands the removal of the barriers upon the admission of its members to citizenship; the action of authority will turn upon its judgment of the consequences of the demand. Usually it will be found that the action of authority turns upon its estimate of the power possessed by those who make the demand and the way in which they will use their power; that is the truth embodied in Royer-Collard's great aphorism that liberty is the courage to resist.

The history of liberty since the Reformation has largely passed through two great periods. In the one the essence of the struggle for its realization has been to free the individual from subordination to a position, religious, political or economic, in which he has been placed by an authority external to himself. The effort has been the conferment upon him of rights—that is, of claims recognized by the law—which he is to enjoy without regard to the groups to which he may belong. This may be called the period of personal emancipation, and its classic expression is in the program of the French Revolution. The conception of society involved in it is that of an aggregate of persons; and it is argued that the fewer the restraints upon the free play of personality, the greater will be the liberty attained. Social effort is devoted to the destruction of privileges which inhere in some specially favored groups. It is generally conceived that the more men are let alone, the less positive the action of the state, the more likely is the individual to be free. In this period liberty is related to justice and equality in a negative way. My relation to my neighbor is deemed socially adequate if the state does not positively intervene to confer benefits upon him which I do not enjoy. Religious privilege, political privilege, privileges of birth or sex or race, little by little go by the board.

But in the period which roughly synchronizes with the growth of the modern proletariat it is rapidly discovered that the merely negative liberty to do what one can does not give freedom to the masses. We then enter upon the period of social emancipation. Government becomes increasingly paternalistic. It regulates the behavior of individuals and groups in the interest of an increasing complexion of equality in their lives. The size of the community tends to make the individual less and less significant. He has to obtain his liberty in concert with others similarly placed in the society to which he belongs. In this period the emphasis of liberty is predominantly in the economic sphere. Men become increasingly aware that grave inequalities in property mean grave differences in access to liberty. The struggle for freedom is largely transferred from the plane of political to that of economic rights. Men become less interested in the abstract fragment of political power an individual can secure than in the use of massed pressure of the groups to which they belong to secure an increasing share of the social product. Individualism gives way before socialism. The roots of liberty are held to be in the ownership and control of the instruments of production by the state, the latter using its power to distribute the results of its regulation with increasing approximation to equality. So long as there is inequality, it is argued, there cannot be liberty.

The historic inevitability of this evolution was seen a century ago by de Tocqueville. It is interesting to compare his insistence that the democratization of political power meant equality and that its absence would be regarded by the masses as oppression with the argument of Lord Acton that liberty and equality are antitheses. To the latter liberty was essentially an autocratic ideal; democracy destroyed individuality, which was the very pith of liberty, by seeking identity of conditions. The modern emphasis is rather toward the principle that material equality is growing inescapable and that the affirmation of personality must be effective upon an immaterial plane. It is found that doing as one likes, subject only to the demands of peace, is incompatible with either international or municipal necessities. We pass from contract to relation, as we have passed from status to contract. Men are so involved in intricate networks of relations that the place for their liberty is in a sphere where their behavior does not impinge upon that self-affirmation of others which is liberty.

In short, the problems of liberty in a pluralistic world are extraordinarily complex. The individual who seeks self-realization finds himself confronted by a network of protective relationships which restrain him at every turn. Trade unions, professional and employers' associations, statutory controls of every kind, limit his power of choice by standardizing the manner of his effort. He has to adjust himself to an atmosphere in which there is hardly an aspect of his life not suffused at least partially with social regulation. To do anything he must be one with other men; for it is only by union with his fellows that he can hope to make an impact upon his environment. And even outside the realm in which the state defines the contours of his effort he finds himself surrounded by a complex of social customs and habits which force him despite himself into conventional modes of behavior. The scale of the great society is definitely unfavorable to the individuality of an earlier period.

One other aspect of this position is notable. The history of liberty has been the growth of a tendency to take for granted certain constituent elements in its substance. There is certainly greater religious freedom, for example, than at any previous time. But when the causes of this change are analyzed, it will be found that the growth of religious freedom is a function of the growth of religious indifference. The battle of liberty is not won but merely transferred to another portion of the field. As the contest over the place of individual property in the state becomes more sharp, the state limits freedom of expression and association in those matters which seem to it dangerous to the principles it seeks to impose. Social instability and liberty are antithetic terms. A society is tolerant when men do not challenge the foundations upon which it rests. Wherever these are in question, it moves rapidly to the conditions of dictatorship; and the elements of liberty are unattainable until a new and acceptable equilibrium has been reached.

It is therefore relatively easy to say what things go to make up liberty; it is extraordinarily difficult to say how its atmosphere can be guaranteed. Liberty can be resolved into a system of liberties: of speech, of association, of the right to share fully in political power, of religious belief, of full and undifferentiated protection by the law. But the question of giving to these separate liberties factual realization turns upon the objects to which they are devoted in any particular society at a given time. No doubt in Soviet Russia a Communist has a full sense of liberty; no doubt also he has a keen sense that

liberty is denied him in Fascist Italy. Liberty in fact always means in practise liberty within law, and law is the body of regulations enacted in a particular society for its protection. Their color for the most part depends upon its economic character. The main object of law is not the fulfilment of abstract justice but the conference of security upon a way of life which is deemed satisfactory by those who dominate the machinery of the state. Wherever my exercise of my liberty threatens this security, I shall always find that it is denied; and in an economically unequal society an effort on the part of the poor to alter in a radical way the property rights of the rich at once throws the whole scheme of liberties into jeopardy. In the last resort liberty is always a function of power.

It is no doubt true that men have endeavored to set the conditions upon which liberty depends beyond the reach of peradventure. Locke sought to do so by his conception of a limited liability state; but experience has grimly shown that in times of crisis the limits of the liability cannot be maintained. Montesquieu argued that liberty is born of the separation of powers in a state; but the truth of his argument is at bottom the very partial one that men are unlikely to be free unless the judicial authority is largely independent of executive and legislature. The constitutions of many modern states have sought to make the alterations of certain fundamentals a matter of special difficulty in order to protect the liberty of their subjects from invasion. Experience suggests that the technique is not without its value; but, as war and dictatorship have shown, it is an expedient for fair weather, always liable to fundamental neglect in times of crisis. It seemed to de Tocqueville that large local liberties were the secret of a general free atmosphere; liberty, he thought, is born of the wide distribution of power. But this appears to be true only when an equal society can take such advantage of the distribution as to make its benefits unbiased in their incidence; and in the struggle for such a society not the most unlikely thing is the rapid disappearance of this characteristic. The great idealist school of political philosophy has found the essence of freedom in obedience to the general will of the state; but it cannot be said that it has made clear, save to its own votaries, either the nature of a general will or the conditions under which a general will, if it exists, may be said to be in effective operation. An important school of modern publicists has sought to find the essential condition of liberty in a supply of truthful news, since in its absence no rational judgment is possible. But it is clear that the supply of truthful news depends upon men being equally interested in the results which the impact of news may make upon opinion; and no such equal interest exists, above all in an economically unequal society.

Generally it may be argued that the existence of liberty depends upon our willingness to build the foundations of society upon the basis of rational justice and to adjust them to changing conditions in terms of reasoned discussion and not of violence. But if that be the case, the existence of liberty depends upon the attainment of a society in which men are recognized to have an equal claim upon the results of social effort and the general admission that if differences are to obtain these must be proved desirable in terms of rational justice also. In this background, as Aristotle saw at the very dawn of political science, liberty is unattainable until the passion for equality has been satisfied. For the failure to satisfy that passion in an adequate way prevents the emergence of equilibrium in the state. Its foundations are then in jeopardy because men are disputing about fundamentals. In such circumstances proscription and persecution are inevitable, since the community will lack that unified outlook upon the principles of its life of which liberty is the consequence. Men who differ upon ultimate matters, particularly in the realm of economic affairs, are rarely prepared to risk the prospect of defeat by submitting their disagreement to the arbitrament of reason. And when reason is at a discount, liberty has never had a serious prospect of survival.

HAROLD J. LASKI

See: CIVIL LIBERTIES; FREEDOM OF SPEECH AND OF THE PRESS; FREEDOM OF ASSOCIATION; INDIVIDUALISM; LIBERALISM; LAISSEZ FAIRE; ANARCHISM; NATURAL RIGHTS; STATE; LAW; AUTHORITY; COERCION; OBEDIENCE, POLITICAL; DEMOCRACY; EQUALITY; PROPERTY; SOCIALISM; COMMUNISM; DICTATORSHIP; INTOLERANCE.

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LIBRARIES. *See* PUBLIC LIBRARIES.

LICENSING. The term license is variously used in law and government with correspondingly varied shades of connotation. Thus in liquor legislation high license was equivalent to a high license tax. Many excise taxes are levied in connection with and through the form of the licensing of some trade, occupation or use or possession of property; but if they are an important source of general revenue rather than simply a means of defraying the expense of administering the particular licensing regulation, they are more commonly spoken of as license taxes than simply as licenses or license fees. A license in the sense of a permit does not necessarily involve the idea of a fee and may be issued gratuitously.

In the law of real property a license signifies permissive use as a matter of indulgence without adverse claim of right on the part of the user or possibly, in a more technical sense, a right of occupancy that falls short of being a right in rem, being merely a claim against the owner; in the law of patent and copyright it signifies a delegation of use and exploitation on specified terms, the connotation of merely permissive use disappearing in this connection.

In the law of municipal corporations the grant by the governing body of a right to occupy streets for public utility appurtenances, such as tracks, poles, wires, pipes or tunnels, is sometimes spoken of as a license in order to distinguish it from a franchise—a term more appropriately used when the grant proceeds from the sovereign—and also to indicate in a somewhat vague manner that the occupancy falls short of an absolute right. It used, however, to be characteristic of this particular form of license that it was given in the form of a special legislative act of the municipal corporation; and however much in theory a competitive grant to a rival undertaking was possible, there was nothing to compel the rival grant, and so long as it was not forthcoming the grantee enjoyed a virtual monopoly. It is therefore quite customary, although perhaps legally inaccurate, to speak of these licenses as franchises.

The form of licensing to be considered here is the administrative lifting of a legislative prohibition. The primary legislative thought in licensing is not prohibition but regulation, to be made effective by the formal general denial of a right which is then made individually available by an administrative act of approval, certification, consent or permit. As a generic term certification might indeed be more appropriate than license; thus a marriage license is so termed only on account of its historical origin as a dispensation with the requirement of a publication of the banns, and when New York in 1896 abandoned the policy of discretionary powers in the control of the retail liquor trade, it dropped the term license and substituted the term liquor tax certificate.

Control through licensing means an administrative advance judgment regarding the presence of legal requirements or the absence of legal objections. It is the legislative policy and hope that law observance may thus be normally and expeditiously insured by eliminating the most obvious or serious sources of future trouble that would have to be dealt with by slower remedial processes.

The greater expedition of administrative action may be secured also without the expedient of the license by the substitution, at least provisionally, of administrative for judicial corrective processes. An administrative order may point out objectionable conditions and practises and direct that they be redressed, thus avoiding both the stigma and the hazard of penal prosecution. It is believed that this permits more elastic control than can be obtained by purely criminal legislation. Related to this method is the system of requiring notification of a proposed course of action to the administrative authorities, who are given a chance to interpose objections but whose failure to act leaves the

private party free to proceed. The Federal Trade Commission and (for a number of purposes) the Interstate Commerce Commission issue orders instead of licenses, and the English Theatre Act of 1843 gave stage censorship the form of a notification requirement subject to an administrative veto power.

The Federal Trade Commission Act, which is directed against unfair methods of competition, illustrates an advantage, from the legislative point of view, which the system of orders has over the system of licensing. It is possible to establish the former by mere reference to general categories of danger and abuse, applicable, for instance, to the entire range of public health or safety, or of interstate and foreign commerce; whereas licensing requirements must be more specific and as a method of dealing with unfair competition would present an extremely complex and difficult task of legislative selection and exemption of businesses or enterprises.

Even more important is the difference between the two systems with respect to the discretionary or non-discretionary quality of administrative action. An order based on default or defect will necessarily have a quasi-judicial aspect and will therefore neither tend, on the one hand, to become mere matter of official routine nor, on the other, be issuable as a matter of free discretion; a licensing system has the widest choice with reference to the freedom of official action.

It is possible to establish license requirements from which administrative discretion is practically eliminated. This means that the conditions entitling to the license are fully specified by the law. If the ascertainment of these conditions involves the determination of facts, the non-discretionary character of the power expresses itself in the inconclusiveness of the administrative finding, which can always be judicially controlled by a mandamus proceeding. A legislative policy opposed to discretion, however, will endeavor to prevent factual controversy by prescribing methods of proof or by basing the license upon statements rather than facts. If this is carried to the point where the official act is one of mere certification, it may become difficult to distinguish the system from a mere registration requirement. Occasionally, however, the difference will become politically important. The legislature may desire to avoid even the semblance of an official consent requirement and yet deem public notice necessary; and it attains that end by attaching to the registration a right to an immediate receipt. In France the right to freedom of assembly was established in this way in 1881.

Discretion enters into the licensing power most commonly through the framing of requirements by the legislature in such a manner that some difference of question as to compliance or fulfilment is regarded as legitimate. Within the limits of this legitimate difference official judgment is respected; beyond it there is legally "abuse of discretion," with the possibility of judicial redress. Such terms as reasonable, adequate, reputable, suitable or safe, which involve value judgments or future probabilities and a lack of objective certainty, are characteristic.

Where as a matter of professional experience value and probability judgments are fairly standardized, discretion may be reduced to the point at which there appears to be hardly more than a question of fact; on the other hand, the range of permissible considerations and their inherent uncertainty may be such as to widen discretion to the point of substantial freedom, as where the legislative reference is to the general welfare or the public good or detriment. Ordinarily such discretion ought not to be and is not delegated where licenses are required for the exercise of private rights. It may be delegated, however, where a primary policy of prohibition is to be relaxed under conditions of emergency or of exceptional hardship; there is then a dispensing rather than a licensing power; but modern legislative practise does not favor unregulated dispensing powers.

Of special importance is the question whether administrative discretion in granting or refusing a license may take into consideration community need and adequacy of existing supply. Formerly in the United States and now in Europe these were expressly made legitimate considerations in the licensing of the retail sale of intoxicating liquors. In the United States the same considerations underlie the "certificate of convenience and necessity" authorizing new public utility undertakings. Restriction to the need of the community is tinged with monopoly; and while monopoly may be justifiable it may lead to grave abuses, such as those connected with grant of monopolistic privileges in the past. The German Industrial Code (*Reichsgewerbeordnung*) therefore takes care to specify the cases in which alone the question of need may enter into licensing discretion; and the German Insurance Law of 1901, otherwise granting wide discretionary powers, expressly excludes the consideration of

need. The recent tendency in the United States has been to recognize in this respect the inherently monopolistic character of public utilities; this character has, however, been extended but slowly to other classes of business, such as banks or savings banks, and it is extremely significant that with regard to the business of manufacturing ice the United States Supreme Court declared the requirement of a "certificate of convenience and necessity" to be inconsistent with the constitutional guaranty of liberty [New State Ice Co. *v.* Liebmann, 52 S. Ct. 371 (1932)].

A discretionary licensing power is very much widened if the grant of the license may be burdened with conditions to be observed by the licensee. According to the better opinion this may not be done without express legislative authority. If the law is explicit as to power but also specifies the permissible conditions, the delegation of discretion is at least definitely circumscribed. But if the grant of power to attach conditions is unqualified, the only limitation is the one implied by law, that the condition must relate to matters within the general jurisdiction of the licensing authority and within the scope of the subject matter regulated [Ann Arbor R. C. *v.* U. S., 281 U. S. 658 (1930)], and the result is a licensing discretion of extraordinary extent, permitting the laying down of rules not merely not expressed in the statute book but also varying from case to case. This power to impose conditions is a conspicuous feature accompanying some of the most important licensing requirements introduced by the Transportation Act of 1920. While it is difficult to foresee all its implications, its development will be watched with great interest; and it is fortunate in this respect that the reasoned decisions of the Interstate Commerce Commission will permit the tracing of the principles upon which the power purports to be exercised.

The question of the authorities to be vested with licensing powers can be answered only by a survey of the entire problem of administrative organization, for the power is apt to be reserved to the organ having principal charge of the subject matter of regulation, if not to the head of the administration. In England certain licensing powers continue to be exercised by justices of the peace, who were originally in many respects the principal local authority; the function is elsewhere not generally regarded as appropriate for either courts or judges. The German Industrial Code prescribes (sect. 21) that in the matter of licenses for noxious trades either the original decision or the decision on appeal must be made by a board; but neither in England nor in the United States is there any clear evidence of a similar policy in favor of boards or commissions, and in the United States many important licensing powers are vested in heads of departments.

Procedural provisions of licensing laws serve the purpose either of safeguarding the public interest or of preventing injustice to the applicant. The former is the more important and is achieved principally through prescribed forms of applications and notice requirements. As a matter of principle the applicant himself is equitably entitled to fair consideration; but since through his application he has automatically a chance to present his case and since he has also a common law remedy of mandamus in case of arbitrary refusal, the occasional failure of the licensing statute to make provision for hearing presents no constitutional question. On the other hand, the Transportation Act of 1920 requires in a number of important cases that applications for permits or certificates shall be acted upon only after a hearing, and this is judicially interpreted as meaning that grant or refusal, as the case may be, must be supported by record evidence. A discretion that would otherwise be judicially uncontrollable by reason of the latitude of permissible considerations may in this way be tied to factual substantiation reviewable by a court [Chicago Junction Case, 264 U. S. 258 (1924)].

Where a license relates to some pursuit or activity extending over a period of time, the question of its revocability becomes important. There is no general common law or statutory rule that makes any license whatever revocable for cause; if the particular licensing statute is silent, the license is irrevocable. It is impossible to generalize upon legislative policy in this respect, save perhaps in Germany, where the Industrial Code (sect. 143) forbids revocation except in cases specified by federal law. The English liquor licensing act, in many respects a model, is extremely conservative in this matter; the licensing powers introduced by the United States Transportation Act of 1920 are unaccompanied by powers of revocation; New York pursues different policies with regard to banking and to insurance; Illinois has standardized the revocation of all professional licenses. Perhaps the observation may be hazarded that the present American tendency is to make professional or occupational licenses revocable for cause (but not at pleasure), that if causes are specified they

may include default or delinquency not amounting to crime, and that revocation is more commonly administrative than judicial, under elementary procedural safeguards and subject to judicial review upon common law principles.

Time limits on the grant of a license serve in a measure as a substitute for a power of revocation and have occasionally been urged with that object in view. In addition to those cases where the nature of the subject matter makes temporary licenses appropriate the practise is possible in connection with trades, occupations and professions. Unless there is practical assurance of renewal, preferably with special legal facilities for that purpose, a brief license tenure will not aid the morale of the occupation. German legislation is for this reason definitely opposed to time limits, but they are quite common in England and the United States.

Toward the middle of the nineteenth century it was possible to discern in the course of legislation a tendency hostile to the multiplication of license requirements: by the constitution of 1846 New York had abrogated its inspection law, which had started at an early period in the history of the state as measures for certifying commodities and had apparently degenerated into a mere method of fee exactions; the Prussian law of 1845 had inaugurated the principle of freedom of vocation, which was later carried into the German Industrial Code of 1869; England was dominated by ideas of laissez faire, which still survive in the absence of license requirements for banking and insurance; and American federal regulation was as yet confined to water borne commerce.

The German Industrial Code, first enacted at the height of the era of economic freedom, leaves positive licensing legislation to the states but establishes nationally operative principles as to what businesses may be subjected to license requirements. This comes quite close to establishing a constitutional status of freedom, but the act leaves outside of its scope very important fields of activity (the practise of law, education, insurance, mining, railway transportation). The main consideration in favor of licensability appears to be the possible tendency of a business to degenerate into a nuisance or its traditional connection with fraud or immorality; but without careful analysis any summary must be somewhat misleading. There is nothing in England or the United States comparable to this comprehensive legislative view. In the latter country sporadic decisions declaring a constitutional right to exemption from license requirements (plumbers in Washington, accountants in Illinois) proceed on no clear theory, and it is easier to recognize a sphere of practical and customary than one of constitutional freedom.

In the United States the former qualification tests for crafts have largely disappeared, and common labor and employment (except of seamen and occasionally of miners) have become free and unchecked; certification systems are adopted where they are indispensable to the operation of a prohibitory policy, as in connection with child labor, but they would be repudiated, for example, as a means of making the restriction of hours of labor of females more effective. Commercial and industrial enterprise as such has remained notably free, and it is particularly significant that corporate facilities are no longer regarded as matter of licensing but virtually as merely matter of registration. Science, art and literature are generally free and the constitutional freedom of the press prevents the licensing of publications, just as religious freedom forbids qualification requirements for ministers. The freedom of art does not extend to public amusements; and although there is no censorship of the stage through licensing requirements, there is such censorship of moving pictures. There are systems of certifying public but not private teachers; educational institutions are free in most of the American states. Licensing requirements now generally apply to public utilities, banking, insurance and the professions. Where a particular service aspires toward a professional status, the pressure for qualification requirements and therefore for licensing comes from within, as in the case of realtors, accountants, nurses and social workers; in the case of dealers in securities and perhaps of insurance agents it seems to come from outside. Often the movement begins with certification facilities or designation privileges; the optional then tends to transform itself into a compulsory system.

Where safety, health and morals are involved, where private activities trench upon the conservation of public resources or where nationalistic interests are to be safeguarded, the license always suggests itself as a ready means of making regulation more effective, if only as a temporary measure pending the discovery of substantial principles of regulation.

Although general statements of tendency are hazardous, there seems to be evident at present a trend toward better safeguarding of the methods of licensing. This is manifested in part in a

reduction or elimination of the discretionary factor, in part in an increasing attention to organization procedure and review. Where some particular branch of regulation has a long legislative history, where interests subject to regulation are strongly intrenched or where a licensing policy is politically contested, considerable attention is likely to be given to administrative detail, whereas unqualified powers are apt to accompany an unclarified legislative policy; the minutiae of regulation in the English Licensing (Consolidation) Act of 1910 contrast in this respect with the few words of the English Petroleum Act of 1918.

As compared with the nineteenth century the present is an era of intensive governmental regulation. Even without a disposition to enhance official powers, perhaps notwithstanding a strong feeling against bureaucratic government, there are many fields in which administrative intervention and even administrative discretion are indispensable. The choice in these fields lies between administrative orders and administrative licenses. The former probably represent a more conservative exercise of public power; but with the burden of initiative thrown upon the government, the check is likely to be sporadic and confined to exceptional cases. A licensing system is the path of least resistance; it lends itself equally to wide discretion and to non-discretion, and private interests are usually able to accommodate themselves to it without undue difficulty. It is so convenient a method of checking the observance of governmental regulations that its permanence in the economy of legislation and administration appears to be assured; but the elaboration of administrative detail with a view to the most effective reconciliation of public and private interest will necessarily be a matter of prolonged experimentation.

ERNST FREUND

See: GOVERNMENT REGULATION OF INDUSTRY; POLICE POWER; LEGISLATION; DELEGATION OF POWERS; ADMINISTRATIVE LAW; COURTS, ADMINISTRATIVE; BOARDS, ADMINISTRATIVE; COMMISSIONS; MANDAMUS; EXCISE; INSPECTION; LIQUOR TRAFFIC; OCCUPATIONS; PROFESSIONS; AMUSEMENTS, PUBLIC.

Consult: Skyles, H. H., in *Corpus Juris*, ed. by William Mack and D. J. Kiser, vol. xxxvii (New York 1925) p. 162–300; Crecraft, E. W., *Government and Business* (Yonkers 1928) ch. xxx; Farrer, T. H., *The State in Its Relation to Trade* (new ed. London 1902); Freund, E., *Administrative Powers over Persons and Property* (Chicago 1928) pt. i, ch. vii, and pt. ii; Powell, T. R., "Administrative Exercise of the Police Power" in *Harvard Law Review*, vol. xxiv (1910–11) 268–89, 333–46, 441–59; Commonwealth Club of California, *Occupational Restrictions*, 2 vols. (San Francisco 1929); Dillon, J. F., *Commentaries on the Law of Municipal Corporations*, 5 vols. (5th ed. Boston 1911), especially vol. ii, sects. 661–71, vol. iii, sects. 1128–31, 1164–69, and vol. iv, sects. 1366–71, 1408–12, 1616–24; McQuillin, E., *The Law of Municipal Corporations*, 7 vols. (2nd ed. Chicago 1928); Woodcock, H. B. D., in *Encyclopaedia of the Laws of England*, vol. viii (2nd ed. London 1907) p. 166–255; Rohrscheidt, Kurt von, *Vom Zunftzwange zur Gewerbefreiheit* (Berlin 1898); Přibram, Karl, *Geschichte der osterreichischen Gewerbepolitik* (Leipsic 1907); Lagenstein, Fritz, *Die Gewerbepolizeierlaubnis*, Abhandlungen aus dem Staats-Verwaltungs- und Völkerrecht, vol. xi, pt. 2 (Tubingen 1912); Schlosser, A., *Die Widerruflichkeit der Polizeierlaubnisse* (Greifswald 1917); Bry, G. E., *Cours élémentaire de législation industrielle*, ed. by E. E. H. Perreau (6th ed. Paris 1921); Catlin, G. E. G., *Liquor Control* (London 1931), especially ch. vii; Greenwood, H. J., *Liquor Licensing System* (Leeds 1924).

LIEBEN, RICHARD (1842–1919), Austrian economist. Lieben studied at the polytechnic schools of Vienna and Karlsruhe and afterwards entered the banking house of Auspitz, Lieben and Company in Vienna. He was vice president of the Handels-Akademie and of the court of arbitration of the exchange. During the inquiry concerning the reform of the Austrian currency in 1892 Lieben advocated the adoption of the gold standard and argued convincingly that the ratio of the old silver currency to the new gold currency be determined according to the market value prevailing at the introduction of the new currency.

Lieben's most important contribution was his collaboration with Auspitz in their work *Untersuchungen über die Theorie des Preises* (Leipsic 1889). This outstanding contribution to mathematical economics presents a unified treatment of price as the central problem of economic theory; wages, rent and interest are treated as particular aspects of the general price problem. Starting from the concept of marginal utility the authors give an original graphic exposition of utility and cost curves and their respective derivatives—demand and supply curves —and arrive at the theory of general equilibrium. The analysis is pursued under the assumption both of stable and of variable estimations of the value of money. In the French translation of the *Untersuchungen* (*Recherches sur la théorie du prix*, 2 vols., Paris 1914) Lieben revised the theory which he had formerly held and defended against the criticism of Walras, that the supply and demand curves of a particular commodity can meet only at a single point.

OTTO WEINBERGER

Consult: Weinberger, Otto, "Rudolf Auspitz und

Richard Lieben" in *Zeitschrift für die gesamte Staatswissenschaft*, vol. xci (1931) 457–92; Pareto, Vilfredo, "La teoria dei prezzi dei Signori Auspitz e Lieben e le osservazioni del professore Walras" in *Giornale degli economisti*, 2nd ser., vol. iv (1892) 201–39; Zawadzki, Władysław, *Les mathématiques appliquées à l'économie politique* (Paris 1914) p. 307–15.

LIEBER, FRANCIS (1800–72), German-American political philosopher and publicist. Born in Berlin, Lieber served two terms in German prisons for his liberal activities and in 1827 emigrated to the United States. He entered actively into the cultural and political life of America. He compiled the *Encyclopaedia Americana* (13 vols., Philadelphia 1829–33), based in general upon Brockhaus' *Conversations-Lexikon*. From 1835 to 1856 he served as professor of history and political economy at South Carolina College and afterwards at Columbia University as professor of history and political science (1857–65) and professor of constitutional history and public law (1865–72). He was a thoroughgoing American nationalist: his numerous theoretical writings, notably the *Manual of Political Ethics* and *Civil Liberty and Self-Government*, supplied a philosophical basis for a policy of national supremacy in the federal union. He took the principal part in the work of a commission appointed by President Lincoln in 1862 to prepare a code of rules for the armies of the United States. Promulgated in April, 1863, as "Instructions for the Government of the Armies of the United States in the Field" (United States, Adjutant General's Office, *General Orders*, no. 100), this code has been accepted as the basis of subsequent American and European codifications of rules for warfare on land. As a political theorist Lieber repudiated the doctrine of social contract and rejected also "natural rights" in the sense of liberties retained from a prepolitical "state of nature." A nation he defined as a people made spontaneously cooperative by a common language and cultural tradition and by a common territorial habitation. In a somewhat vague theory he interpreted political sovereignty as an authority naturally inherent in a nation, manifested in a national public opinion and "the source of all other political authority" yet restrained in its actual power by a balanced distribution of functions among central governing agencies, by a concession of wide powers of self-government to local bodies and by the maintenance of an independent judiciary sustaining "natural" rights—rights, that is, which are essential to the normal development of man in society and which receive persistent recognition in the traditional institutions and guaranties of a "common law." Lieber showed no striking originality in his political theory, and his style is somewhat prolix; but the comprehensive and systematic form of his writings and their breadth of philosophical and historical vision gave them great influence upon later American theorists, notably Theodore D. Woolsey and John W. Burgess.

FRANCIS W. COKER

Important works: *Manual of Political Ethics*, 2 vols. (Boston 1838–39; 2nd ed. rev. by T. D. Woolsey, Philadelphia 1875); *Legal and Political Hermeneutics* (Boston 1839, 3rd ed. St. Louis 1880); *On Civil Liberty and Self-Government* (Philadelphia 1853; 3rd rev. ed. by T. D. Woolsey, Philadelphia 1874); *Miscellaneous Writings*, ed. by D. C. Gilman, 2 vols. (Philadelphia 1881).

Consult: Harley, Lewis R., *Francis Lieber, His Life and Political Philosophy* (New York 1899); *Life and Letters of Francis Lieber*, ed. by Thomas Perry (Boston 1882); Nys, Ernest, "Francis Lieber: His Life and Work," tr. from French ms. by C. G. Fenwick and W. C. Carpenter, and Root, Elihu, "Francis Lieber" in *American Journal of International Law*, vol. v (1911) 84–117, 355–93, and vol. vii (1913) 453–69; Parrington, V. L., *Main Currents in American Thought*, 3 vols. (New York 1927–30) vol. ii, p. 93–98, and vol. iii, p. 119–20.

LIEBERMANN, AARON SAMUEL (*c.* 1840–80), Jewish socialist. Liebermann was born near Grodno. After an orthodox religious education and thorough training in Hebrew and the Talmud, in 1869 he entered the Technological Institue in St. Petersburg. In 1874 he led a revolutionary agitation in Vilna; pursued by the police he fled to London, where he founded a Jewish section of the Russian Social Revolutionary party and in 1876 the first Jewish trade union. He then moved to Vienna, where in 1877 he edited *Haēmet* (The truth), the first Jewish socialist periodical in the Hebrew tongue. After serving prison sentences in Austria and Prussia he emigrated to the United States.

Liebermann was one of the first to discern the beginnings of class differentiation in the Jewish masses of the 1870's and to perceive the need and possibility of forming independent Jewish socialist organizations within the major socialist movements of the various countries. He was inspired by Lavrov's call to the Russian intelligentsia to go to the people and he called upon the Jewish intellectuals to bring the message of socialism to the Jewish masses. Keenly appreciative of the cultural values of the Jewish heritage, he combined his socialist ideal with the ideal of

Jewish national regeneration and the revival of the Hebrew language. Although Liebermann's activity was short lived and its immediate effect but slight, his work was significant because of its influence on the subsequent Jewish socialist movement.

JAKOB LESTSCHINSKY

Works: *Kitbe A. S. Liebermann*, ed. by M. Berkowitz (Tel Aviv 1928).

Consult: Tscherikower, A., "Der onhoib fun der yiddisher sotzialistisher bavegung" in Yiddisher Visnshaftlicher Institut, Historishe Sektzye, *Historishe shriften*, vol. i (Warsaw 1929) p. 469–532; Zitron, S. L., "Die ersten Sozialisten in der hebräischen Literatur" in *Jude*, vol. iii (1918–19) 394–404; Burgin, H., *Die geshichte fun der yiddisher arbeiterbavegung* (in Yiddish) (New York 1915) p. 22–27, 36–43.

LIEBERMANN, FELIX (1851–1925), German historian, legal scholar and philologist. Liebermann was born in Berlin and was the son of a prominent Jewish textile manufacturer. In 1869 after completing his studies at the Werder Gymnasium in Berlin he spent nearly four years in business. He visited England, where he became proficient in the English tongue and acquired a keen interest in English institutional history. Since his main intellectual interests already lay in the direction of Germanic history and institutions he decided to forsake business for the life of a scholar. After attending lectures by Mommsen and Droysen at Berlin he continued his Germanic studies at Göttingen under Waitz, Pauli and Frensdorff, and there he learned also the rudiments of palaeography and laid the foundations of a broad culture. In 1875 he published as his doctoral dissertation at Göttingen the remarkable *Einleitung in den Dialogus de Scaccario* (Göttingen 1875), a work in which he gave abundant evidence of his exceptional powers as a textual critic and historian. Thereafter his chief interests in scholarship were centered in the English aspects of the history of Germanic laws and institutions; he became universally recognized as one of the most eminent mediaevalists and in particular as the foremost authority on the laws of the Anglo-Saxons and the legal literature of the Norman period of English history.

Liebermann was for a time on the editorial committee of the *Monumenta Germaniae historica* and prepared two volumes himself for the series. In numerous writings, which appeared from 1892 to 1901, he restored the law books of the Norman age; by his editions of contemporary treatises on Normanized Anglo-Saxon law he illumined important aspects of the law of post-Conquest times; and from Anglo-Norman texts based on Anglo-Saxon sources he recovered much of the early English law before it had been subjected to Norman influence. Liebermann's most important work is *Die Gesetze der Angelsachsen* (3 vols., Halle 1903–16), which engaged most of his time for nearly thirty years. It was prepared at the request of the Savigny-Stiftung für Rechtsgeschichte, with the support of Konrad von Maurer and Heinrich Brunner. The work consists of a careful edition of the Anglo-Saxon laws, translation into German of all the original texts, a dictionary of the words used in the text, a glossary of the subject matter and introductions and explanatory notes to all the texts. The importance of this monumental work is that it established a text of the sources in keeping with the critical standards of modern times and provided a scholarly apparatus for the illumination of the text. While it has not entirely displaced some of the earlier editions of the Anglo-Saxon laws, notably Reinhold Schmid's *Gesetze der Angelsachsen* (Leipsic 1832, 2nd ed. 1858), it is nevertheless rightly regarded by scholars as one of the most important of all source books for the study of early English laws and institutions and within the field it covers as an indispensable guide in research. In addition to the works already mentioned Liebermann published many valuable articles and essays dealing with aspects of mediaeval history, especially the legal and institutional history of England.

H. D. HAZELTINE

Consult: Brandl, A., in *Archiv für das Studium der neueren Sprachen und Literaturen*, vol. cl (1926) 1–5; Heymann, Ernst, in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung*, vol. xlvi (1926) xxiii–xxxix; Tout, T. F., in *History*, vol. x (1925–26) 311–19; Davis, H. W. C., in *English Historical Review*, vol. xli (1926) 91–97; Maitland, F. W., *Collected Papers*, ed. by H. A. L. Fisher, 3 vols. (Cambridge, Eng. 1911) vol. iii, p. 447–73.

LIEBIG, FREIHERR JUSTUS VON (1803–73), German chemist, pioneer in the application of chemistry to agriculture. After preliminary studies in natural science at Bonn and Erlangen Liebig went to Paris in 1822. There he made the friendship of Alexander von Humboldt, who introduced him to the laboratory of Gay-Lussac and later helped him to secure a professorship at the University of Giessen. He immediately established a laboratory to provide practical instruction, and through his effective presentation of the results of his investigation he soon made

Giessen the center of German chemical teaching and research. A large number of European and American students, who were to become world famous theoretical and applied chemists, received their training under his direction.

Liebig's interest in the application of chemistry to agriculture grew directly out of his theoretical work in organic chemistry, which demonstrated that so-called organic products can be created in the laboratory out of inorganic substances. In 1840 he made his report to the British Association for the Advancement of Science on organic chemistry and its applications to agriculture and physiology. In this treatise, revised and improved by him in numerous editions during his lifetime, he attacked the prevailing humus theory of plant growth, which held that plants derive all their nourishment from the decayed organic matter in the soil, and maintained that plants derive their carbon and nitrogen from the carbon dioxide and ammonia in the atmosphere while their other food elements, such as potassium, phosphorus, lime and soda, come ultimately from the minerals in the soil. These must be periodically replenished if fertility is to be maintained. He further developed the principle, later formulated as the Law of the Minimum, that "by the deficiency or absence of *one* necessary constituent, all the others being present, the soil is rendered barren for all those crops to the life of which *that one constituent* is indispensable." The determination of the indispensable elements for a given crop is obtainable through the analysis of the ash content of that plant, thus putting the whole problem of fertilizer on a quantitative scientific basis. For many years Liebig conducted practical experiments to determine the best methods for applying mineral fertilizer to the soils. Originally he applied the fertilizer in insoluble form, fearing that it would otherwise be washed away by rain; later he recognized his mistake and found that the soil itself has a capacity for absorbing and holding soluble minerals.

It is not to Liebig's discredit that his theories concerning plant nitrogen were later proved erroneous; investigations in the 1880's demonstrated that leguminous plants alone have the capacity of fixating nitrogen from the atmosphere. All other plants depend for their nitrogen supply on plant or animal fertilizer or on chemicals derived either from such sources or (since the beginning of the twentieth century) from electrical synthesis of atmospheric nitrogen. Leguminous plants, however, may be grown without a nitrogen supply in the soil or may be used to enrich the soil for other crops by being plowed in as green manure. Subsequent research has also shown that Liebig's emphasis on artificial manures underestimated the importance of natural fertilizers, which serve to improve the texture of the soil and to conserve its moisture.

Without disparaging the work of other chemists who worked in this field—Boussingault in France and Lawes and Gilbert in England—Liebig may be regarded as the real founder of modern agricultural chemistry; more than any other he is responsible for the revolution in agriculture created by the use of artificial fertilizers.

FRITZ GIESECKE

Important works: Die Chemie in ihrer Anwendung auf Agrikultur und Physiologie (Brunswick 1840; 9th ed. by Philipp Zoller, 1876), pt. i tr. by Lyon Playfair (4th ed. London 1847), and pt. ii tr. by John Blyth from 7th German ed. as *The Natural Laws of Husbandry* (London 1863); *Grundsätze der Agrikultur-Chemie, mit Rucksicht auf die in England angestellten Untersuchungen* (Brunswick 1855, 2nd ed. 1855), English translation (London 1855); *Uber Theorie und Praxis in der Landwirthschaft* (Brunswick 1856); *Naturwissenschaftliche Briefe über die moderne Landwirthschaft* (Munich 1859), tr. and ed. by John Blyth (London 1859).

Consult: Liebig, Justus von, "Justus von Liebig, Eigenhändige biographische Aufzeichnungen," ed. by Georg von Liebig in *Deutsche Rundschau*, vol. lxvi (1891) 30–39, tr. by J. C. Brown in *Chemical News*, vol. lxiii (1891) 265–67, 276–78, reprinted in Smithsonian Institution, *Annual Report, 1890–91* (1893) 257–68; Volhard, J., *Justus von Liebig*, 2 vols. (Leipsic 1909); Shenstone, W. A., *Justus von Liebig: His Life and Work* (London 1895); Honcamp, F., *Justus Liebig und sein Einfluss auf die Entwicklung der Landwirtschaft*, Rostocker Universitäts-Reden, no. 6 (Rostock 1928); Goltz, Theodor von der, *Geschichte der deutschen Landwirtschaft*, 2 vols. (Stuttgart 1902–03) vol. ii, p. 277–300. For contemporary criticism of Liebig's work, see Lawes, J. B., and Gilbert, J. H., "On Agricultural Chemistry, Especially in Relation to the Mineral Theory of Baron Liebig," and "On Some Points Connected with Agricultural Chemistry" in Royal Agricultural Society of England, *Journal*, vol. xii (1851) 1–40, and vol. xvi (1855) 411–502.

LIEBKNECHT, KARL (1871–1919), German socialist leader. Karl Liebknecht, whose father Wilhelm Liebknecht was one of the founders and recognized leaders of the German Social Democratic movement, was an outstanding representative of left wing socialism. A lawyer by profession, in 1908 he became a member of the Prussian Chamber of Deputies and in 1912 a member of the German Reichstag, and he engaged actively in the struggle for more militant party tactics. He particularly opposed German

militarism; this opposition, which he linked up with the demand for a more revolutionary socialist policy, met with much sympathy, especially among the socialist youth organizations.

At the outbreak of the World War Liebknecht was one of the few in the Social Democratic Reichstag delegation who were opposed to the war and to the granting of war credits. At the caucus on August 4, 1914, however, he yielded to party discipline and voted for the credits. In December, 1914, he voted as the only Social Democratic deputy against the new demand for credit, an act which acquired world significance and strengthened the antiwar minority in the socialist International. Together with Rosa Luxemburg he founded the Spartakusbund, which condemned the official socialist support of the war and proclaimed, at first only within the Social Democratic party and then directly among the masses as well, the revolutionary struggle against the German government and its policy. In order to suppress Liebknecht's activities the government called him to military service, but in 1916 he took part as an active soldier in an antiwar street demonstration in Berlin. He was arrested and sentenced by a war tribunal to four years' imprisonment, which won him much sympathy as a martyr to the cause of peace and workers' freedom even beyond the circle of the Spartakusbund. In October, 1918, he was liberated by an amnesty.

While it was Liebknecht who struck the first blows for liberty on behalf of the revolutionary workers of Germany, the November revolution of 1918 not only took place without his assistance but was in fact guided by forces foreign to his ideas; thus from the very first Liebknecht came into sharp opposition to the new German socialist-republican government. He advocated alliance with the Russian Bolsheviks, although, like Rosa Luxemburg, he did not approve of their theory and practise in important details. In December, 1918, the Spartakusbund became the Communist party of Germany. Liebknecht had no illusion that the greater part of the German people was ready for a communist revolution and therefore urged a preparatory campaign of agitation and organization, When, however, an uprising of revolutionary workers broke out in January, 1919, both Liebknecht and Rosa Luxemburg threw in their lot with the combatants. After the suppression of the January uprising by the socialist-republican government Liebknecht was murdered by a group of monarchist officers. He was essentially an agitator and organizer, not a theorist; his significance lies in the practical role which he played at a critical moment in the development of the German socialist movement.

ARTHUR ROSENBERG

Important works: *Militarismus und Antimilitarismus* (Berlin 1907), tr. as *Militarism* (New York 1917); *The Future Belongs to the People*, Speeches Made since the Beginning of the War, ed. and tr. by S. Zimand (New York 1918); *Reden und Aufsätze* (Hamburg 1921); *Politische Aufzeichnungen aus seinem Nachlass, geschrieben in den Jahren 1917–18* (Berlin 1921); *Studien uber die Bewegungsgesetze der gesellschaftlichen Entwicklung* (Munich 1922).

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LIEBKNECHT, WILHELM (1826–1900), German socialist leader. The Liebknecht family was one of scholars and state officials related to Luther. Liebknecht studied theology, philosophy and philology at the universities of Giessen and Berlin, from which he was dismissed on account of his socialist and Polish sympathies. He took part in the German Revolution of 1848 and after its collapse found an asylum in London, where he lived as newspaper correspondent and teacher until 1862.

In London Liebknecht associated with Karl Marx, by whom he was greatly influenced but with whom also he already disagreed on many fundamental issues. He was not a consistent Marxist; his democratic ideology clashed with the Marxist conception of class struggle and revolutionary dictatorship. He remained essentially a Forty-Eighter, striving for a *Germania magna* gathering all her children into a united commonwealth governed by the principles of human freedom and social justice. Liebknecht passionately abhorred Bismarckian statecraft. In 1862 he joined the editorial staff of the Berlin *Norddeutsche allgemeine Zeitung*, but as soon as he became aware that it was in the service of Bismarck he resigned his position. The government took its revenge and expelled him from Prussia, whereupon he removed in 1865 to Leipsic, won August Bebel for socialism and helped to organize the democratic-socialist elements into the Eisenach party in opposition to the Lassallean General Workers' Union, which be-

tween 1867 and 1870 favored Prussian policy. As member of the Reichstag in 1870 he fearlessly opposed the war with France and together with Bebel voted against the military appropriations. Later in a pamphlet *Die Emser Depesche* (Nuremberg 1891, 7th ed. 1899) he revealed to the world Bismarck's falsification of the Ems dispatch (July, 1870), which precipitated the Franco-Prussian War. In 1893 Bismarck acknowledged Liebknecht's critical acumen by publicly admitting that he had "altered the Ems dispatch from a *chamade* into a *fanfare*." For his international, pacifist attitude Liebknecht was charged in 1872 at Leipsic with high treason and sentenced to two years' detention in a fortress. His speeches at the trial were instinct with courage and eloquence; he transformed the court into a platform for socialist agitation.

Except in the years 1868 and 1869, during which he sometimes expressed social revolutionary ideas, Liebknecht worked to the end of his life for peaceful social reform and democratic institutions. After the unification of the Eisenach party with the Lassalleans at Gotha in 1875 he was among the leaders who drew upon themselves Marx' sharp criticism of the Gotha program as an abandonment of revolutionary objectives and tactics. In the period 1898–1900 he fought against the revisionism of Eduard Bernstein and others who wished to adapt the revolutionary theory of the party to its moderate social reform practises; he adopted the official centrist position of the party. At the age of seventy Liebknecht went to prison for four months on a charge of quasi-lese majesty. He edited the leading party paper, *Vorwärts*, played an important role in party life during the period of Bismarck's antisocialist laws and profoundly influenced German socialist journalism; his articles served as models to a generation of working class writers.

MAX BEER

Important works: *Über die politische Stellung der Sozial-Demokratie* (Leipsic 1869); *Wissen ist Macht* (Zurich 1872, new ed. Berlin 1894); *Zur Grund- und Bodenfrage* (Leipsic 1876); *Robert Blum und seine Zeit* (Nuremberg 1888, 2nd ed. 1890); *Ein Blick in die neue Welt* (Stuttgart 1887); *Geschichte der französischen Revolution* (Berlin 1890); *Die Emser Depesche* (Nuremberg 1891, 7th ed. 1899); *Robert Owen* (Nuremberg 1892); *Karl Marx zum Gedächtnis* (Nuremberg 1896), tr. by E. Untermann (Chicago 1901); *Weltpolitik, Chinawirren, Transvaalkrieg* (Dresden 1900).

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LIEN. The term lien is generally used in Anglo-American law to describe any jural privilege which secures a debt against an owner's specific property. The historic common law lien was a possessory lien on personal property; that is, the lienor had the privilege of retaining the possession of the debtor's property until the former's claim with respect to that particular property had been satisfied. Possession was the essential characteristic of the relationship, because if the lienor gave up his possession he lost his privilege. On the other hand, the debtor's title to the property, although divorced from its possession, was unimpaired, because the lienor could not by sale or otherwise affect the debtor's title.

A lien is to be distinguished from a pledge, by which possession but not title is transferred, because a pledge carries with it a power of sale over the property. A lien is also to be distinguished from a mortgage (until recently only of real property), by which title but not possession is transferred by what purports to be a conveyance to the creditor, subject to a provision calling for a reconveyance to the debtor if the debt is paid by a certain day. A lien is entirely distinct from the debt or obligation which it secures. It is only a remedy to compel payment, so that unless the debt is paid the extinguishment of the lien does not affect the existence of the debt. A lien is of course extinguished by payment or by tender of payment. As Salmond well puts it, the lien is a shadow cast by the debt upon the property of the debtor.

Historically the common law possessory lien arose apparently out of the lien which the owner of land had for the keep of cattle which had strayed on to the land. Such a lien existed as early as 1371. A lien was then recognized in the case of personal property in the possession of innkeepers and next of common carriers, as a corollary to the obligatory duty of both these classes to serve the general public. By the late fifteenth century usage had extended the protection of the lien to tailors and other persons who had worked on chattels. Ultimately it was held that mechanics, artisans and tradesmen generally were entitled to the benefit of a lien. The early doctrine ultimately developed into the general rule that whenever property was delivered by the owner to another for a special purpose, it might be retained by the latter until the

particular debt thereby incurred was discharged.

Beside this common law lien there grew up another type of possessory lien, called the general lien, by which all the property of the debtor in the possession of a lienor was retained to secure general indebtedness due on a general account. The courts have always viewed this general lien with distrust, and it has not been widely extended. The liens which have been enforced most frequently are those of lawyers, banks and stockbrokers, all of relatively recent origin. In furtherance of commercial transactions it has also become established that special or general liens can be created by the express agreement of the parties where they would otherwise not exist.

The extension of common law liens by contractual agreement coincided with the development of equitable doctrines and the creation of the equitable lien in certain types of cases, so that contractual or quasi-contractual obligations could be enforced by a remedy directly against the specific property or its proceeds: in contracts relating to specific property where one party had performed or stood ready to perform his part of an agreement; in quasi-contracts where money or property had been unlawfully obtained, it or its proceeds being traceable and being in the hands of those who were not able to claim in good faith to retain it. In these types of cases courts of equity in order to enforce the obligations more effectually than by granting merely a pecuniary remedy of damages, as at common law, have treated the relationship as creating a charge upon or hypothecation of the particular thing. An equitable lien is therefore a kind of charge or encumbrance on specific property or its proceeds to secure the payment of an obligation directly connected with that property. It will at once be seen that the equitable lien has wholly departed from the necessity for possession inherent in the common law lien. The earliest equitable lien appears to have been that of an unpaid vendor of land, which was recognized at least by the late fifteenth century.

The maritime lien is still another type of lien and resembles in some respects both the equitable lien and the hypothec of the civil law. Possession of a vessel is hardly ever necessary for the creation of maritime liens, which arise from tort relations, such as collisions, as well as from such contract or quasi-contract relations as seamen's wages, salvage, bottomry and the supply of necessaries. Maritime liens adhere to a vessel even in the hands of an innocent purchaser and upon the theory of the preservation of the res outrank one another inversely from the date of original creation, contrary to all other kinds of liens.

The chief defect of the common law lien was that the mere right of retention was not coupled with a power of sale. This defect was not remedied in England until well into the nineteenth century and then by statute only in a few cases where there was a duty to serve the public—thus in the cases of innkeepers, wharfingers and railroad companies [Innkeepers Act, (1878) 41 & 42 Vict., c. 38, sect. 1; Merchant Shipping Act, (1894) 57 & 58 Vict., c. 60, sects. 497–98; Railways Clauses Consolidation Act, (1845) 8 & 9 Vict., c. 20].

In the United States the right of sale has been conferred more generally and many new types of liens have been created by statute. The state of New York, possessing large rural as well as large urban interests, may be chosen as typical. Apart from mechanics' liens, its statutes provide for liens either with reference to certain things or in favor of certain types of persons as follows: vessels; monuments, gravestones and cemetery structures; labor on stone; artisans for work on personal property; hotel, apartment hotel, inn, boarding or lodging house keepers; factors; bailees of animals; bailees of motor vehicles or motor cycles; manufacturers and throwsters of silk goods; work on watches, clocks and jewelry; truckmen and draymen; motion picture film laboratories; chattel mortgages on stocks of merchandise and on canal craft; United States government internal revenue taxes. A simple and fair method is provided for the enforcement of all liens by sale of the property at public auction, which must be advertised; previous notice must be given to the debtor, who is afforded an opportunity to redeem his property. The statutory right of sale has in effect transformed the common law lien into a statutory pledge.

Where more than one lien exists, that which is prior in time generally prevails. A prior equitable lien is superior to a subsequent legal lien by judgment. A common law lien, however, is superior to all other rights in the property, while on the contrary a statutory or contractual lien is subordinate to all prior existing rights in the property. Equitable liens are assignable, so much so that an assignment of the debt carries the lien with it as a necessary incident; but common law and statutory liens are generally considered to be merely a personal privilege and so not assignable; in a few states they may be

assigned if the property is simultaneously delivered to the assignee.

Legal privileges analogous to the lien exist in continental countries either by way of so-called rights of retention or by way of preferences which in effect create implied hypothecs; that is, rights of pledge, arising by operation of law. The presence of the former in continental legal systems may be ascribed primarily to their development in German common law doctrine, which thus again showed the influence of the Germanic emphasis upon possession. The preferences of the continental law may be traced to the Roman law of implied hypothec, which might extend either to all or to some particular part of the property of a debtor. It seems, however, that in the later Roman law the *exceptio doli generalis* in effect secured rights of retention, since it was available against claims the assertion of which for some reason would have been unequitable.

The French Civil Code shows plainly the influence of the Roman law. Its sytem is primarily one of preferences or implied hypothecs. A preference is defined by the code as "a right which the nature of the claim gives to a creditor to be preferred to other creditors, even mortgagees" (§2095). Such preferences are general, applying to all of a debtor's property, when the claim is for funeral expenses, expenses of the last illness, servants' wages for the previous and the current year and the like (§2101); or particular, applying only to specified objects of personal property, as, for example, to a thing for expenses incurred in keeping it in repair, to the effects of a traveler for board furnished by an innkeeper or to a thing carried for expenses of carriage (§2102). Pure rights of retention exist in favor of unpaid vendors (Civ. §§1612, 1613), innkeepers and carriers (Civ. §§1782, 1948, 1952) which are essentially similar to the common law liens but which are exceptional in the general legal scheme of France. Other privileges are created by the Code of Commerce for the charges of factors (§95); for freight (§§307, 308); and for maritime claims generally (§191), in which case the lien is on the ship.

The German Civil Code recognizes a general right of retention subject to *Konnexität*; that is, to some connection between claims (§273). In certain cases, however, a right of retention is expressly negatived. Ordinarily there is no right of sale, but this exists in particular cases where the code adds a right to pledge; thus in the case of lessors and lessees, contractors, and innkeepers under certain circumstances (§§559, 585, 590, 647, 704). The German Code of Commerce of 1897, effective 1900, lays further emphasis on possession and provides that every merchant, including by definition bankers, carriers, factors, warehousemen, brokers, booksellers, publishers and manufacturers (§1), shall have the right to retain by agreement the possession of personal property to secure an existing indebtedness arising out of bilateral mercantile transactions (§369) or in the case of bankruptcy an unmatured indebtedness (§370). The right is enforced by sale as if there were a pledge (§371). In addition factors have a similar right of retention for their commissions, expenses and advances (§§397, 398, 410, 411), as have warehousemen for warehousing charges (§421) and carriers for carriage (§§440, 441); these rights of pledge subsist as long as possession is retained of a bill of lading, carrier's receipt or warehouse receipt; where there are several rights of pledge, the latest creditor in point of time is preferred (§443). The German maritime law provides the usual privileges for maritime transactions, most of which do not contemplate or require a retention of possession. The Swiss Civil Code of 1907, effective 1912 (there is no separate Swiss commercial code) provides for rights of retention (§§895–898) when a creditor is in possession of movable chattels or securities. The creditor, however, is also given a right of sale, after previous notice to the debtor to meet the obligation. Under the Swiss code there are no privileges apart from possession as under the French code.

The mechanic's lien is an American invention which may be ascribed to democratic sympathies with the rights of labor, although the first mechanic's lien law, which was enacted by Maryland in 1791, was intended primarily to spur the building of the national capital at Washington. The next mechanic's lien law was passed in Pennsylvania in 1803. The early laws were sometimes highly local—New York's first "lien law" of 1830 applied only to New York City. The special recognition of a mechanic's lien was necessary because of the legal and practical difficulties inherent in the distinction made between real and personal property. It was expensive and troublesome for a workman to collect for materials supplied in building, which were considered to become part of the real property when attached, and for labor expended thereon. A further difficulty often arose from the fact that the workman's only claim was against a contractor and not directly

against the landowner. By the modern statutes contractors, subcontractors, laborers and materialmen have generally been given liens directly against the land and buildings improved. In their operation, however, such statutory liens are more like the equitable lien, since the property is not in the possession of the workman. Usually a notice of lien must be filed, and within a specified time thereafter an action must be commenced to enforce the lien; the action is very much like one to foreclose a mortgage. Likewise execution issues primarily against the real property, and if it is insufficient to satisfy the judgment there may be a further judgment for the deficiency against the person contractually liable.

Mechanics' lien laws have spread not only from state to state in the United States but across the American frontier into the Canadian provinces. In England there is no exact equivalent to the mechanic's lien, but the Preferential Payments in Bankruptcy Act of 1888 gives a preference to ordinary laborers and workmen for two months' wages, but not exceeding £25; to general wages and salaries for four months, but not exceeding £50; and to agricultural laborers hired on a lump sum annual basis for claims not exceeding one year's wages.

In France §2103 and §2110 of the Civil Code create a privilege against real property, subject to certain formalities of registration, in favor of architects, contractors, masons and other workmen who have erected, reconstructed or repaired buildings and those who have furnished the money to pay them; this privilege, however, is of limited value because it is restricted to the additional value of the property resulting from the work performed. In Germany §648 of the Civil Code creates a privilege in favor of a contractor, who can require a cautionary hypothec (cf. §§1184, 1185) either when the work is performed or from time to time as it progresses. By the provisions of the *Bauforderungsicherungsgesetz* of June 1, 1909, this privilege was vastly better implemented and extended to workmen. By the Swiss Civil Code of 1912 workmen and contractors are given a statutory mortgage on the property which their labor and materials have improved. This right cannot be renounced in advance (§837). A public record is kept and entry on it, which is required, can be made up to three months after the completion of the work (§839). Several of such mortgages on the same property rank equally, as there is no priority in time (§840); any prior general mortgagee who knowingly has permitted the property to be overmortgaged must compensate the workmen, out of the value of the buildings, to the extent of the excess of his mortgage if the workmen suffer any loss on foreclosing (§841). The Swiss practise is thus very similar to the American.

The lien has survived in modern law as a legalized species of self-protection. It is the special safeguard of small claims. To establish the ideal relationship it is necessary to adjust various considerations. To leave the full legal and equitable ownership in the debtor and to permit him also to retain possession may facilitate fraud by making possible a sale to innocent purchasers or the obtaining of unwarranted credit on the basis of the debtor's fictitious appearance of wealth. On the other hand, if the small lienor has to employ much legal procedure to obtain the property in order to satisfy the debt, the resulting expense renders his lien worthless as a practical matter. Secret liens are obviously unfair. Public recording alone is not satisfactory, because so far as small claims are concerned it is derisory to require a search through public records, although this answers well enough when claims are large. Wherever the nature of the property permits, the ends of justice would seem to be best served by a possessory lien coupled with a power of sale.

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See: OWNERSHIP; POSSESSION; BAILMENT; COMMON CARRIER; HOTELS; WAREHOUSING; LANDLORD AND TENANT; PAWNBROKING; MORTGAGE; PLEDGE.

Consult: GENERAL: Holdsworth, W. S., *A History of English Law*, 10 vols. (London 1922–32) vol. vii, p. 511–13; Salmond, John, *Jurisprudence* (8th ed. London 1930) p. 460–94; *Corpus Juris*, vol. xxxvii (New York 1925) p. 303–47; Jones, L. A., *A Treatise on the Law of Liens*, 2 vols. (3rd ed. Indianapolis 1914); United States, Library of Congress, Division of Bibliography, *List of Books on Mechanics' Lien Laws: Select List of References*, no. 912 (1925); Colin, A., and Capitant, H., *Cours élémentaire de droit civil français*, 3 vols. (vol. i 6th ed., vols. ii–iii 5th ed. Paris 1929–30) vol. ii, p. 776–870; Thaller, E., *Traité élémentaire de droit commercial* (7th ed. Paris 1925) p. 1175–1214; Elekes, N. A., *De quelques différences dans l'application du droit de rétention d'après la jurisprudence française et allemande* (Paris 1929); Popesco, G. I. D., "Le droit de rétention" in *Collection d'études théoriques et pratiques de droit étranger, de droit comparé et de droit international*, no. 21 (Paris 1930); Simond, F. E., *L'hypothèque légale de l'entrepreneur en droit suisse* (Lausanne 1924); Siber, H., *Das gesetzliche Pfandrecht des Vermieters, des Verpächters und des Gastwirtes nach dem Bürgerlichengesetzbuche für das Deutsche Reich*, Abhandlung zum Privatrecht und Civilprozess des Deutschen Reiches, vol. v, no. 2

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LIETZ, HERMANN (1868–1919), German educator. After studying theology and philosophy at Jena Lietz worked under Rein in the practise school at Jena and taught for a year in Cecil Reddie's school, Abbotsholme, England. His ideas were much influenced by Rousseau, Pestalozzi, Jean Paul and Goethe. The son of a rich peasant and a peasant himself all his life, Lietz felt urban school life, classroom immobility and rigidity of schedules, hours and examinations to be psychologically harmful to children. He attacked the old Prussian schools, all very military in tone, offering instead an educational program designed to benefit both body and mind. In 1898 he founded at Ilsenburg the first German *Landerziehungsheim*, later reserved for children from eight to twelve, where play was made the center of all educational activities. In 1901 he founded a second one in Thuringia for boys from twelve to sixteen, where manual training, agriculture, carpentry and farm work were the central studies. In 1904 he established a third near Fulda for young men from sixteen to twenty; it was devoted to science and art, but play and manual work were part of the educational program. Shortly before the World War drew him into the army Lietz founded the *Landwaisenheim* at Veckenstedt. In all these schools there were many free pupils. The system of schools was supplemented by an advisory organization of pupils' parents and a yearbook and magazine devoted to discussions of school questions. This pioneer work in establishing rural education centers developed especially in Wickersdorf and Odenwald, but the centers established there broke violently with Lietz in 1906. Nearly 150 schools adopted the name *Landerziehungsheim* before the International Bureau of New Schools in Geneva defined the term by thirty criteria. A foundation took over the schools Lietz established and added others; in 1931 six were in existence. More important, state schools have adopted many reforms initiated by Lietz, and his ideas have influenced the German youth movement.

ADOLPHE FERRIÈRE

Important works: *Lebenserinnerungen*, ed. by E. Meissner (Leipsic 1920, 3rd ed. Veckenstedt 1922); *Die deutsche Nationalschule* (Leipsic 1911, 2nd ed. Vekkenstedt 1920); *Unterricht und Kunst in deutschen Landerziehungsheimen* (Berlin 1903); *Deutsche Landerziehungsheime* (Leipsic 1910).

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LIFE EXTENSION MOVEMENT. The desire to prolong life and to recapture youth and health is as old as the human race. Priests, physicians, alchemists and magicians have sought and sold elixirs of life. Paracelsus in the sixteenth century purveyed an elixir of aloes, myrrh and saffron; Roger Bacon put his faith in viper's flesh, to be taken only when the sun is ascending. The use of magical specifics to outwit death, although still prevalent, has diminished with the advance of general scientific knowledge. Even quacks and cultists have turned from the sale of magical charms to the promotion of pseudo-hygienic regimes. Commercial agencies exploit human credulity by selling health magazines, membership in health clubs, books containing formulae for longevity, exercising appliances and courses in physical culture. Semireligious movements feature health rejuvenation; anti-tobacco and anti-alcohol evangelists use pleas for the extension of life in their propaganda. The Christian Science church has been the most

influential of the spiritual health cults. Its founder, Mary Baker Eddy, declared that "man *is*, not *shall be*, perfect and immortal" (*Science and Health*, new ed. Boston 1906, p. 428); and although she admitted later that physical death was possible, her disciple Augusta Stetson proclaimed until the end that she would never die. Pseudo-hygienic cults promoting a longer life seize upon some single factor, often of real but limited value, and ignore all other aspects of the health situation; an example is the health movement recently popular known as Fletcherism, which elaborated the doctrine of the necessity of thorough mastication of food into a system of "dietetic righteousness."

Until the human race has been educated out of its credulity, short cuts to health and long life will continue to enlist at least temporary followings. For the development of a social movement of any significance, however, there must be an end generally accepted as desirable and a means capable of achieving it. As long as dominant opinion looked forward piously to eternal life after death there could be no social movement for the prolongation of earthly existence, however large the trade in elixirs. In the modern world health and long life are respectable social ideals and scientific medicine has amply demonstrated its efficacy in promoting them. The average length of life in Europe and America has increased with the advance of medical knowledge and its application. At the end of the eighteenth century the expectation of life at birth in Massachusetts was about thirty-five years; in the United States Registration Area in 1900 it was forty-nine years and it is now about fifty-eight years. The increased expectation of life has been confined to the lower age groups and has been due almost entirely to the reduction in infant mortality and in the mortality from the serious infectious diseases; no gain has been made in the expectation of life after forty-five.

It has been only within the last twenty-five years that there has developed an organized movement with the prolongation of life as its avowed objective. The modern life extension movement aims at the fuller application of preventive medicine in all its branches; more especially it strives to reduce the mortality from the serious chronic diseases of middle age—heart and kidney diseases and cancer—which have assumed increasing importance as causes of death. The corner stone of the movement is the promotion of periodic health examinations, with the object of insuring early diagnosis and prompt correction of incipient degenerative processes and the instruction of the patient in the manner of living best adapted to his condition. The impetus behind the development of the movement was the economic interest of life insurance companies in reduced mortality. At a meeting of the Association of Life Insurance Presidents in 1909 Irving Fisher urged as a sound business investment the promotion of health work and the provision of free periodic health examinations to life insurance policyholders, and the movement which was subsequently initiated has made the life insurance companies among the most powerful forces in American health work today. The movement is now by no means confined to insurance companies and is being vigorously supported by the public health services and the medical profession. The companies cooperate with the public health authorities in general educational work, conducting health demonstrations, issuing pamphlets and giving lectures; they make special efforts to keep their own policyholders alive by the offer of free periodic health examinations, by sending out health literature and in some cases by providing free nursing service to industrial policyholders. Although the movement is mainly American, some Canadian, English, Australian and Japanese companies have engaged in health activities.

The importance of periodic health examinations has been publicized especially by the Life Extension Institute, Inc., which was organized in 1913 as a self-supporting stock company to make such examinations for life insurance companies, industrial and social organizations and for individuals; in 1929 it served over forty life insurance companies and examined about 130,000 people. There are also organizations which sell periodic laboratory tests by mail and issue health advice to their clients.

The attempt to control serious chronic diseases through the education of the individual in personal hygiene has become an increasingly important factor in the modern public health campaign; in this work public health nurses have performed excellent service. In 1922 the American Public Health Association adopted as its goal the addition of twenty years to the average length of life within the next fifty years.

Preventive medicine must depend largely upon the individual practitioner; yet until ten years ago the medical profession did little to encourage periodic health examinations. This was due partly to restrictions imposed by the

code of medical ethics on anything resembling advertising; perhaps an equal deterrent has been the tendency on the part of physicians to regard only the treatment of the sick as their concern and to leave prevention to the public health departments. But at its meetings in 1922 and 1924 the American Medical Association adopted resolutions urging its members to promote periodic health examinations. The organized medical profession now engages extensively in educational work; books for the use of physicians on preventive medicine have been issued by professional associations; and the preventive aspects of individual medical practise are being stressed in the medical schools. In addition to the insurance companies, the public health services and the medical profession voluntary organizations, such as the National Tuberculosis Association, the American Social Hygiene Association, the American Society for the Control of Cancer and the American Heart Association, encourage research, promote healthful legislation and engage in educational work. The American public has been slow to respond to this extensive propaganda. Only about 10 percent of insured persons to whom it is offered have availed themselves of the free examination service; a survey by the Commission on Medical Education (*Report*, no. i, New Haven 1927, p. 63) revealed that only 3.4 percent of the office visits to general practitioners were for physical examinations and that of these 95 percent were for life insurance purposes.

Since the initiation of the movement the expectation of life has almost attained the addition of fifteen years suggested by Fisher in 1909 on the basis of his calculation of the degree of preventability of the principal causes of death. This increase has been due mainly to the reduction in the mortality from tuberculosis, typhoid, diphtheria, diarrhoea and enteritis. No decline is discernible in death rates from cancer, heart disease or nephritis. It is probable that a further reduction in the incidence of infectious diseases of childhood and venereal diseases will result in a reduced mortality from heart and kidney diseases and that medical research will finally succeed in transferring cancer into the category of preventable diseases. There is every prospect that the advance in general longevity will continue until the expectation of life approaches the limit of the natural life span, the length of which has not yet been conclusively determined. Fisher, assuming a natural life span of one hundred years and the continuation of the present rate of increase in the average length of life, estimates that an American infant born in the year 2000 may have an expectation of life of eighty-two years. Hornell Hart, ignoring biological limitations and assuming as a probability the continuance of the present rate of acceleration in the increase in the average length of life, calculates that a life expectation of two hundred years may be reached during the next century.

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See: MORTALITY; MORBIDITY; MEDICINE; PUBLIC HEALTH; NURSING; HEALTH EDUCATION; HEALTH CENTERS; SANITATION; LIFE INSURANCE; COMMUNICABLE DISEASES, CONTROL OF; EPIDEMICS; POPULATION; STATISTICS.

Consult: Eycleshymer, A. C., "Growing Old and the Search for an Elixir of Life" in *Scientific Monthly*, vol. xxvi (1928) 400–11; Pearl, R., "A Note on the Inheritance of Duration of Life in Man" in *American Journal of Hygiene*, vol. ii (1922) 229–33, "Preliminary Account of an Investigation of Factors Influencing Longevity" in *Journal of the American Medical Association*, vol. lxxxii (1924) 259–64, and "Longevity, a Pedigree," and "The Inheritance of Longevity" in *Human Biology*, vol. iii (1931) 133–37, 245–69; Pearl, R., and Raenkham, T., "Studies on Human Longevity: Constitutional Factors in Mortality at Advanced Ages" in *Human Biology*, vol. iv (1932) 80–118; Metchnikoff, Élie, *Essais optimistes* (2nd ed. Paris 1914), tr. by C. C. Mitchell as *The Prolongation of Life* (New York 1908); Dakin, E. F., *Mrs. Eddy, the Biography of a Virginal Mind* (New York 1929); Reed, Louis, *The Healing Cults* (Chicago 1932); Cox, R. L., *Conservation of Human Life* (New York 1912); Fisher, Irving, *Economic Aspect of Lengthening Human Life* (New York 1909), and "Lengthening of Human Life in Retrospect and Prospect" in *American Journal of Public Health*, vol. xvii (1927) 1–14; Dublin, L. I., *The Possibility of Extending Human Life* (New York 1922); Musgrave, W. E., "Social Movements for the Prolongation of Life" in *Journal of the American Medical Association*, vol. lxxxv (1925) 1639–41; Ohio State Medical Association, Committee on Medical Economics, "Report" in *Ohio State Medical Journal*, vol. xxi (1925) 334–37; Fisk, E. L., "The Profession and the Life Extension Institute" in *New York State Journal of Medicine*, vol. xxix (1929) 584–87; Winslow, C.-E. A., *The Evolution and Significance of the Modern Public Health Campaign* (New Haven 1923); Moore, H. H., *American Medicine and the People's Health* (New York 1927); Frankel, Lee K., "The Role of Life Insurance Companies in Health Conservation Programs," American Academy of Political and Social Science, *Annals*, vol. cxxx (1927) 1–8. A chronological bibliography is to be found in Fisk, E. L., and Crawford, J. R., *How to Make the Periodic Health Examination* (New York 1927) p. 367–74.

LIFE INSURANCE. The general principle of insurance is perhaps as old as civilization. It consists in making a small present sacrifice in order either to avoid a greater loss or to reap a reward at a future time. The development of

monetary contracts as they now exist has been much more recent, although they were known in early times. In the second century of the Christian era the Roman *collegia* built up funds to provide burial for their members; and some insurance of this sort, often connected with crafts or guilds, has been maintained in many communities from that time to the present day. Marine insurance was in all probability the earliest form of corporate insurance involving monetary benefits.

Life insurance, a more modern product, has two principal origins. The first is in marine insurance. The owners of vessels found that under the trade practises of early days the life of the captain sent off on a trading voyage was almost as important as the safety of the ship itself. There consequently arose the system of insuring not only against the loss of the vessel but also of the captain's life for such period as the voyage might cover. The second origin is in the craft guilds. From earliest times men of similar occupation or with common interests bound themselves together in friendly association. Members were helped in sickness and old age, and burials were arranged. On the death of a member it became customary to seek charitable donations on behalf of the family. This charitable practise developed into a right, and each surviving member was assessed a fixed sum for each death. In some cases the contributions were made definite, and the amount was distributed among the beneficiaries. Out of these practises arose the early forms of life insurance along assessment lines. When a corporation was formed in order to transact this business on a commercial basis, it was necessary to charge each entrant a fixed amount in advance; that is to say, a premium, to prevent the danger of nonpayment of assessments at the end of the year. Accordingly estimates had to be made at the beginning of the year and a premium had to be assessed according to the magnitude of the sums which would probably be paid at the end of the year.

During the seventeenth and the early eighteenth century a number of scientists, notably Sir William Petty, Dr. Edmund Halley and Abraham de Moivre, had devoted much attention to the mortality rate of the population. They found that while it was impossible to foretell the date of death of an individual the death rate of any large group of persons remained consistent and predictable from year to year and also that there was a steady decrease in physical resistance throughout later life. It was seen that the assessment system contained a fundamental weakness, since the risk of death increased with age and men of the average age of sixty must show a different death rate from that of a group of the average age of thirty or forty. Equal assessments for all ages as at first practised were therefore unjust. One of the best of the old assessment corporations, the Amicable Society for a Perpetual Assurance Office, which had been chartered in England in 1706, refused to accept for insurance any applicant over the age of forty-five. This was a partial meeting of the difficulty.

Out of these speculations there developed the Society for Equitable Assurances on Lives and Survivorships, which was planned and promoted in London in 1756. Much opposition to the granting of a charter arose and business was therefore begun in 1762 under a deed of settlement. The company, familiarly known as "The Old Equitable," is still active, proving the wisdom of its founders. Formed by policyholders for their mutual protection, it was the first to be based on a scientific calculation of level premiums for life with the provision that no increase in the premium could take place despite the increase of mortality with advancing years. It must be readily understood that because a man of thirty-five, who pays a level premium for life, is subject to an increasing mortality rate, he must in the early years pay a larger sum than is needed for the immediate cost. The excess must be carried forward at interest to meet the heavier mortality charge when it arises. This is a fundamental concept in level premium life insurance and it accounts for the large accumulation of company funds, which are not earnings or surplus but would be more accurately termed accruing liabilities.

In calculating a fixed premium for life it is necessary to use two factors, the influences of which will be felt for a long time in the future. These are a death rate and an interest rate. A third element in practical management, the expense of handling the business, is a factor depending on individual conditions and control. The first premiums of the Equitable Society were calculated from observations on mortality in the city of London. These were unduly high and were changed in 1782 to the basis of the well known Northampton Table—also high for men in good circumstances and in good health. The contrast between the death rates of the Northampton Table (based on the mortality ex-

periences of the English city of Northampton over the period 1735 to 1780) and those of the American Men Table (covering an investigation from 1900 to 1915 and based on the experiences of life insurance companies) is illuminating. The figures in Table I are for a few specimen ages. The Northampton Table, because it dealt with the general population of a town less healthy than many other communities, was faulty in construction, so that the death rates were exaggerated. On the other hand, the American Men Table deals with modern conditions and healthy male lives all of which have been approved for life insurance purposes.

TABLE I

NORTHAMPTON AND AMERICAN MEN MORTALITY TABLES, SELECTED AGES

NORTHAMPTON TABLE (1735–80)				AMERICAN MEN TABLE (1900–15)			
AGE	LIVING AT AGE	DYING IN YEAR	DEATHS PER 1000 LIVING	AGE	LIVING AT AGE	DYING IN YEAR	DEATHS PER 1000 LIVING
15	5423	50	9.2	15	100,000	346	3.46
20	5132	72	14.0	20	98,199	385	3.92
21	5060	75	14.8	21	97,814	393	4.02
22	4985	75	15.0	22	97,421	401	4.12
30	4385	75	17.1	30	94,114	420	4.46
40	3635	76	20.9	40	89,653	524	5.84
50	2857	81	28.4	50	82,805	959	11.58
60	2038	82	40.2	60	69,555	1856	26.68
70	1232	80	64.9	70	46,185	2839	61.47

Source: Price, Richard, *Observations on Reversionary Payments* . . . (4th ed. London 1783) vol. ii, p. 311, 313; and United States, Bureau of the Census, *United States Life Tables* . . . (1921) 226–39.

A mortality table purports to trace a complete body of persons (as, for example, a group of 100,000) from the cradle to the grave. If the rates of mortality for each age can be determined, there can be derived from them a complete table from the beginning to the end of life. The death rate of 3.92 per 1000 persons derived from 98,199 persons at the age of twenty is given above. If similar rates are obtained for all other ages, then, commencing with an arbitrary number such as 100,000 (called the radix of the table), the number who would die in each year of age from such death rates can be computed. These rates if obtained over a brief period of years do not take into account the climatic, social or racial changes which may occur in a long period, such as one hundred years, which the table in theory purports to cover.

The early forms of life insurance were either for temporary uses or were ordinary life policies as developed by the Equitable Society. If each of the 98,199 persons living at the age of twenty is insured for $1000, according to the American Men Table $385,000 is needed at the end of the year for payment of all claims. The premium paid at the beginning of the year earns a year's interest, making it necessary to discount this $385,000. At 3½ percent interest the present value at the beginning of the year is $385,000 divided by 1.035, or $371,982. The share of each one of the 98,199 would therefore be $3.79. This is the net cost of $1000 insurance to be paid in event of death within one year. For a similar $1000 in the second year the amount to be provided would be $393,000, and discounted for two years the single premium for the second year would be $3.74. Therefore the single premium for two years will be the sum of the two, or $7.53. To determine the single premium for the whole of life this process has to be continued for every age to the limit of the table. A popular error is that the function known as the "expectation of life," which is the average number of years lived by a group of any given age, can be used for premium and other calculations. But this method is mathematically incorrect and is therefore not used by actuaries.

Developments on the European continent and in the United States did not follow far behind those of England. In France the Compagnie Royale d'Assurance sur la Vie was authorized to begin business in 1787 and enjoyed a state monopoly until 1792. In 1820 with the chartering of the Compagnie d'Assurances Générales sur la Vie French life insurance was definitely launched on its modern career, and before a decade had elapsed some seven companies were dividing the field. In Germany the first success-

ful companies to make their appearance were the Lebensversicherungsbank für Deutschland, chartered in 1828 at Gotha, and the Deutsche Lebensversicherungsgesellschaft, chartered in the same year at Lübeck. Branches of English companies were soon to be found operating in Germany, Holland and the Scandinavian countries; the branches of French companies found profitable fields of activity in Spain, Belgium, Italy and Switzerland. Prior to 1843 most of the life insurance in the United States was written by foreign companies, which were subjected to but slight supervision. With the opening of offices in 1843 by the New England Mutual Life Insurance Company and the Mutual Life Insurance Company of New York there began a new era in life insurance history in the United States; by 1870 there were 110 life insurance companies in the country which were operating either as mutual, joint stock or joint stock and participating companies.

While the policies of these early American companies followed scientific principles, many of the conditions written into them appear illiberal by modern standards. Thus the policies of pre-Civil War America had no surrender values, made no provisions for loans to policyholders and allowed no days of grace. Policies became void in many circumstances that would today be considered unfair: suicide or death by dueling, for example, voided the policy; a trip to North Carolina, Georgia or Florida or an ocean voyage (without permit and extra premium) likewise made the policy "null, void and of no effect." Today travel, residence and occupation are entirely free after a policy has been issued; suicide is a risk that is covered after a period of not more than two years from issue. Even if the insured discontinues his premium payments and neglects to claim any equity, a fair and just return is made and is maintained on the company's books, whether or not the insured protects his own interests.

During the period from 1855 to 1872 the subject of state supervision came increasingly to be discussed. It was felt that life insurance should be guarded by the state as a semipublic trust. Massachusetts led the way by creating a board of insurance commissioners and in 1855 established the first state insurance department headed by a paid commissioner. New York followed Massachusetts' example in 1859, and before 1870 thirty-five of the states had either established special insurance departments or delegated supervision to specified officials. Rules were devised for licensing all life insurance companies and they were called upon to submit statements on standard forms and observe fixed rules in the valuation of their business and assets in order to secure a certainty of payment to beneficiaries under their contracts. The tables of mortality and the maximum rate of interest to be used were prescribed by law. Massachusetts not only was a pioneer in state control, but in choosing Elizur Wright as its first insurance commissioner it gave a great impetus to the development of life insurance methods along sound lines. Wright was an original thinker and did not always follow the practices of Europe, although he studied them. The annual net premium valuation, the licensing of agents, the maintenance and investment of all reserves for United States business within the United States, non-forfeiture benefits in event of lapse and the prohibition of the writing of life insurance by any corporation granting fire, marine and some other forms were features introduced by Wright; in all these particulars the American requirements differed from those of Europe. These supervisory rules were difficult of adoption by European companies and resulted in a gradual withdrawal of practically all such companies from the United States. Since the 1880's little life insurance has been granted in the United States except by domestic and Canadian companies.

In the last quarter of the nineteenth century there developed in the United States a speculative phase in life insurance contracts through the issue of the so-called semitontine policies. The word tontine implies an enhanced benefit to survivors after a period like twenty years, earned at the expense of those who meanwhile die or discontinue their contracts. Such policies furnished guaranteed benefits in event of death but provided large returns to survivors, partly accumulated from year to year and partly made up of values lapsed and forfeited by those who failed to maintain their insurance. These tontine surplus policies were merged into the deferred dividend idea; both resulted in much disappointment. The interest earnings, which were 6 percent or 7 percent when the tontines and estimates were originally issued in the 1870's, fell rapidly and by 1900 an interest rate of 4 percent was not unusual. Surplus earnings were therefore much less than those estimated.

One of the effects of the high priced tontine policies was a renewal of interest in cheap insurance in term forms; there even took place

a revival of the ancient idea of assessment insurance. From 1875 to 1895 many corporations were launched to write assessment insurance, some of them being fraternal organizations and others assessment insurance corporations. The advocates of this type of insurance insisted so much upon the novelty of their plan that it became common to speak of the regular, full reserve and level premium plans as "old line." After twenty or twenty-five years of operation an assessment company usually begins to find the mortality rate increasing. The average age becomes greater, necessitating increases in assessments. Any increase in cost makes policyholders scrutinize their insurance and some of the healthier give up assessment protection, possibly taking permanent forms at fixed rates. The agents of the regular companies aid this movement. These discontinuances of the policies on healthy lives raise the proportion of the unhealthy, causing a still higher mortality rate with the need of still further increased charges. When once this process starts it becomes cumulative and ends in the disintegration of the corporation.

The result of the deferred dividend and assessment plans was a large number of disappointed policyholders of both types in the period from 1897 to 1904 and the rise of a powerful wave of popular dissatisfaction. Contributing to the same dissatisfaction was the appearance of a factional dispute in one of the large New York companies, the stock control of which was held by a single person who did not retain the confidence of the directors. Public opinion was aroused against the principle that the interests of thousands of policyholders might be jeopardized by a small stock interest held by one man. Other items of unfavorable publicity and some glaring instances of extravagance were brought to light, all of which resulted in the appointment by the New York legislature in 1905 of a joint legislative committee with sweeping powers, the so-called Armstrong Committee, to investigate life insurance and the life insurance companies licensed in New York state. The investigation threw a lurid light on some wrongful practises, and changes in the New York law were made. The following brief summary of the legislative changes will show the lines of popular clamor and the nature of the abuses which were attacked.

First, syndicate participations were prohibited. Second, facilities were created for converting a stock corporation into a mutual life insurance company. Third, elaborate regulations for voting by policyholders in mutual life insurance companies, including the right to vote by mail, were set up. Fourth, directors' qualification was extended to permit any policyholder in a stock life insurance company to qualify for directorship. Fifth, investment powers were restricted; especially stock and collateral trust bonds were prohibited as investments for life insurance companies. Sixth, officers and directors were not to derive any personal profit by commission or otherwise from any investment or loan made on behalf of the company. Seventh, the formation of any new assessment insurance corporation was prohibited. Eighth, a limitation was placed on agency expenses and commissions. At first this was too drastic, making inadequate allowances which had to be expanded. The principle is still in effect. Ninth, a limitation was placed on surplus. The original provisions of this were also too drastic and were later extended. The early limits were clearly unsafe, if indeed any limit can be justified. Tenth, the amount of new business which a company could write annually was restricted. This too was afterward expanded. Eleventh, a company issuing participating business could not also issue non-participating. All mutual companies could issue participating business only. A stock company could select either participating or non-participating but could not write both after January 1, 1907. Twelfth, there was to be a compulsory annual distribution of surplus. Thirteenth, there was to be the compulsory use of a standard policy form in New York state by all life insurance companies. This was put in effect for a year or two, but it prevented initiative and improvement; the law was afterward repealed and standard provisions substituted. Fourteenth, the companies' liabilities were to be evaluated by the "select and ultimate" method. An attempt was made to compel the sale of all stockholdings and of real estate within five years after acquisition. The superintendent of insurance was given discretionary power to extend this period, and extensions were granted from time to time. Some holdings could not have been sold at anything like their true value if this five-year order had been held effective.

As a result of the facilities for mutualization extended by the New York law two of the largest and one of the smaller New York companies retired their stock and became mutual companies. A third large corporation in New Jersey took steps toward the same end, depos-

iting its stock with trustees on behalf of the policyholders. These transformations took place without being accompanied by any essential change in the executive management of any one of the companies.

The life insurance disclosures were discussed and considered by nearly every state in the union. One of the early results of the New York investigation was the meeting at Chicago in February, 1906, of a national conference of governors, attorneys general and state insurance commissioners, which in turn set up a Committee on Uniform Legislation (the so-called Committee of Fifteen). Other investigations took place, notably in Canada and Wisconsin, and many new laws were enacted. Most of the states followed with more or less modification the recommendations of the Committee of Fifteen. The companies generally were shown to be financially sound and the publicity attending these inquiries and legislative activities gave an extraordinary impetus to the industry throughout the country. The amount of insurance in force in the United States almost doubled over the decade between 1901 and 1910, increased more than two and a half times in the next ten years and again increased more than two and a half times in the decade of the 1920's. Table II shows

TABLE II

GROWTH OF THE BUSINESS OF AMERICAN LEGAL RESERVE LIFE INSURANCE COMPANIES, 1850–1931

YEAR	INSURANCE IN FORCE	ASSETS	PAYMENTS TO POLICYHOLDERS AND BENEFICIARIES	NEW BUSINESS
1850	$ 47,862,221	$ 4,138,391	$ 642,495	$ 14,233,193
1870*	2,023,884,955	269,520,440	44,949,257	587,863,236
1890	4,048,846,781	770,972,061	90,007,519	1,144,114,318
1900	8,562,080,722	1,742,414,173	168,687,601	1,973,611,066
1910	16,404,261,042	3,875,877,059	387,302,073	2,557,053,467
1920	42,281,390,527	7,319,997,019	744,649,245	10,105,444,804
1930	107,948,277,732	18,879,611,097	2,246,776,105	19,019,790,453
1931	108,885,562,894	20,159,939,830	2,606,551,153	17,226,248,427

* Figures for 1870 include only companies authorized to do business in New York state, probably 97 percent of the total for the country.

Source: For 1860–1910, Elston, J. S., in Actuarial Society of America, *Transactions*, vol. xxvii (1926) 331–41; for 1920 and 1930, *Insurance Year Book Life Insurance*, for 1920–21 and for 1930–31; for 1931, computations of Association of Life Insurance Presidents.

the great expansion of life insurance in the United States over the period extending from 1850 to 1931.

Two events in the last fifteen years have particularly aided the growth of life insurance. The first of these was the adoption by the government of war risk insurance, devised with the intention of forestalling claims for bonuses or pensions on the part of veterans. In 1917, when the United States entered the World War, life insurance up to $10,000 was offered to every soldier at standard net rates for yearly term policies. The nation assumed the extra hazard of war and the hazards of mutilation, disablement and disease, for which fair and just compensation was promised. Most of the soldiers in the United States Army had the maximum insurance during service, the premiums being deducted from monthly pay. This brought to the attention of more than 4,000,000 young men the benefits of life insurance in its protective character. As if to emphasize its value the world was soon after afflicted by the influenza epidemic of 1918–19, when thousands of young men and women apparently in perfect physical condition were suddenly carried off. Other stimulating influences on life insurance were seen in new business developments, such as group insurance for employees of large corporations, provision for the new inheritance taxes and the development of insurance trusts.

While the primary purpose of life insurance is protection of the family, the building up of an estate and guarding against an impecunious old age have become important phases. Policies with limited premiums create an equity more quickly than the ordinary life policy, while endowments, whereby the sum insured matures at a fixed time, make a still more direct provision for old age and furnish an income which can be determined in advance. Policies on partners, with the sum insured payable at the first death, provide funds at a crucial time. Creditors take out insurance on the lives of their debtors; borrowers protect a loan or mortgage; parents effect educational endowments to secure higher

education for their children. One of the early purposes was to furnish annuities in exchange either for a fixed purchase price or for annual premiums. An annuity may be on a single life or on two or more lives, as on husband and wife with benefit payable as long as either lives. It may be immediate or deferred, the deferred annuity being usually purchased by annual premium. Various selling features have had more or less temporary popularity, such as gold bond contracts, policies with coupons attached for dividends, part premium note settlements and the like. Payment of double face amount in event of accidental death can be secured at a small extra charge of about $1.25 per $1000. Between 1910 and 1930 a special disability benefit attained a great vogue: many companies granted a waiver of premium and an income of $10 per $1000 per month in event of total and permanent disability from accident or disease. This has been modified by most companies, however, and the income benefit has been discontinued by many because of serious losses in the later 1920's, when poor business conditions led to an unusually heavy claim rate under the appearance of disability. All of these developments have added to the popularity of life insurance and fostered its growth during the last ten years.

The scientific part of life insurance is handled by actuaries; and the development of actuarial science has kept pace with the activity and growth of life insurance. Sixty or seventy years ago after a college course in mathematics a young man could acquire a fair degree of proficiency by becoming associated with the actuary of one of the life companies. In Great Britain the actuaries formed the Institute of Actuaries in 1848, meeting regularly for study of common problems. In America a similar step was taken in 1889 when the Actuarial Society of America was formed by a group of actuaries living for the most part on the eastern seaboard. This society at first admitted members on the recommendation of its fellows, but soon it was found desirable to examine applicants; now nearly everyone who becomes a fellow passes a series of strict examinations. Twenty years later in 1909 another actuarial body, the American Institute of Actuaries, was started in Chicago. The two groups work in harmony and friendly accord; they conduct their examinations up to the associateship degree through a joint examining board. These examinations cover certain branches of higher mathematics and the more technical phases of life contingency calculations, also the theories of interest, annuities, mortality tables, premiums and the like. The fellowship examinations are broader in their scope and deal with the commercial side of life insurance in the selection of risks, keeping of accounts, banking, finance and the elements of insurance law. In 1932 the Actuarial Society of America had 315 fellows and 263 associates. Some of these were also members of the American Institute of Actuaries, which reported 172 fellows and 175 associates. Both of these bodies advise their students as to the best courses of study and as to other matters; they also maintain libraries for research and reference.

The education of the public in life insurance is conducted principally by the agency forces. In the eighteenth century it was customary for business men to seek out the insurance company and apply for life insurance. This practise continued into the nineteenth century. But in the period from 1800 to 1830 a number of companies started to write life insurance as a business venture, as was already being done in marine and other forms. They appointed agents, who received commissions for the introduction of business. This innovation caused much comment and criticism at the time; the payment of the commission was often unknown to the client. Sometimes a man seeking life insurance would consult his solicitor, to whom he paid a consultation fee; it was unethical for the solicitor to receive also a commission from the company which he recommended. To this day the Equitable Society employs no agents and pays no commissions. Gradually the appointment of agents and the payment of commissions became the recognized practise. It tends to economy of supervision and rewards services according to results. Long experience has proved that people do not of themselves seek and purchase life insurance. Someone has to explain its nature, purpose and benefit before a man will rouse himself to make application.

Control of the agency systems in America is maintained under two different plans. The older of the two is the general agency system, under which a territory is allotted to a trained life insurance man, who is paid commission and allowances and who assumes responsibility for all business and outlays in his district. He selects and pays his subagents and solicitors, generally by commissions, sometimes granting drawing accounts against commissions to be earned. He also pays his own office force, collects premiums on a commission basis and so on. The other

plan is that of the managerial system, under which the district is controlled by a salaried employee appointed by the home office. The manager makes contracts on commission terms between the company and agents whom he may appoint. The central office of this manager's district is maintained by the company, usually with a cashier and clerical assistance. Responsibility for new business production within the territory rests with the manager; frequently his salary is determined by the volume in the preceding year.

One of the interesting differences between life insurance in Great Britain and in America lies in the varying agency systems. In America there is a great army of trained agents, salesmen or underwriters giving their entire time and energy to making contacts between applicants and companies. There exist college courses in salesmanship, and the degree of Chartered Life Underwriter (C.L.U.) can be acquired. In Europe the agency system differs: there are many part time workers consisting of lawyers, bankers and merchants with no specialized knowledge, who write applications only for their clients and friends. The only salaried employees are the inspectors or supervisors, some of whom receive also a small overriding commission on the business of their district. There is no anti-rebate law in Great Britain; frequently a man who writes little more than the insurance on his own life is appointed an agent. The American system has been introduced into Great Britain by one or two Canadian companies; the outcome of the experiment will be of interest. The intensive drive for new business steadily conducted under the agency system has resulted in the leadership of the United States in volume of life insurance. Table III indicates that in recent years over 70 percent of the total life insurance

TABLE III

LIFE INSURANCE IN FORCE THROUGHOUT THE WORLD

(In $1000)

COUNTRIES	AS OF DECEMBER 31, 1926	AS OF DECEMBER 31, 1928	AS OF DECEMBER 31, 1929
United States*	79,644,487	95,306,315	103,146,440
Canada	4,299,068	5,720,413	6,608,526
Brazil†	145,936	435,110	
Argentina†	62,317	94,699	105,591
Chile	26,170‡	33,439	85,270
United Kingdom	10,896,977	11,481,582	11,705,129
Germany	1,950,390	3,283,625	3,722,694
Sweden	1,087,336	1,158,820	1,259,731
Netherlands	853,768	974,018	1,055,823
Italy**	601,978‡	951,274	1,039,155
France**	522,051	926,242	1,118,099
Switzerland†	493,903‡	571,284	614,457
Denmark	402,629	432,386	
Norway	299,780‡	375,395	
Austria	223,804	370,011	506,160
Japan**	3,142,367	3,733,657	3,972,874
India	228,334	259,343	
Union of South Africa†	593,159	667,522	
Australia**	2,007,003	2,310,579	
New Zealand**	108,421	117,170	122,942
Other countries	5,410,122	6,797,116	
World Total	113,000,000	136,000,000	

* Excluding government war risk insurance.
† Amounts cover insurance in force on lives of residents of country in both domestic and foreign companies. For all other countries amounts cover insurance in domestic companies, including their foreign business.
‡ Estimated on the basis of amounts of other years.
** Including government insurance.
Source: Association of Life Insurance Presidents, *Proceedings of the Twenty-fourth Annual Convention* (1930) 39.

in the world was written by American companies.

The rate of interest earned is of great importance to the success of a life insurance company. Additional interest earnings of 0.5 percent will make a difference of about 5 percent in the premium rate and more than 20 percent in the average dividend rate of a participating com-

pany. The average rates of interest earned by the life insurance companies operating in the state of New York over a period of years are as follows:

1880	5.6 percent
1890	5.1 percent
1900	4.5 percent
1905	4.4 percent
1910	4.6 percent
1915	4.8 percent
1920	4.8 percent
1925	5.1 percent
1930	5.0 percent
1931	4.9 percent

One of the most important functions of an executive is therefore the supervision of the investments, and one of his main objects is to secure the highest interest return without endangering the principal. The trends of investments in the past fifty years can be seen from Table IV. Real estate holdings have diminished greatly. The growth of policy loans is a disturbing element, for such loans diminish the protective value of the insurance.

The payment of the proceeds of life insurance policies may be arranged under several modes of settlement. A cash payment is not always desirable, because the fund is so often dissipated through unwise investment on the part of a widow or other beneficiary lacking in business ability. Accordingly other plans are

TABLE IV

DISTRIBUTION OF ASSETS OF LIFE INSURANCE COMPANIES REPORTING TO NEW YORK STATE, 1880–1931

CLASSES	ASSETS IN 1931 (in $1,000,000)	PERCENTAGE DISTRIBUTION OF CLASSES IN			
		1931	1926	1906	1880
Government bonds					
United States	395	2.1	4.1	0.1	
State, county and municipal	728	3.9	2.9	3.6	9.0
Canadian and foreign	477	2.6	2.5	3.1	
Stocks and bonds					
Railroad	2,986	16.2	20.2	34.8	
Public utility	1,856	10.0	6.9	4.7	21.0
Miscellaneous	611	3.3	1.5	3.7	
Real estate	519	2.8	1.8	5.4	12.0
Mortgages					
Farm	1,846	10.0	16.5	9.3	39.0
Urban	5,249	28.4	26.5	19.2	
Collateral loans	18	0.1	0.2	1.8	6.0
Loans to policyholders	2,943	15.9	12.0	8.9	5.0
Cash in offices and banks	145	0.8	0.8	2.3	5.0
Other assets, including outstanding premiums, accrued interest, etc.	727	3.9	4.1	3.1	3.0
Totals	18,500	100.0	100.0	100.0	100.0

Source: Figures for 1880, computations of author; figures for 1906–31, Association of Life Insurance Presidents, *Annual Report, 1931* (1932) 83–84.

available. The policyholder may provide that the insurance be paid in fixed instalments for a period of years; or the proceeds may be left with the insurance company at interest and the principal sum paid at some fixed date in the future, in some cases after the death of the beneficiary. The interest rate varies and is determined from year to year by the board of directors and has run from $4\frac{1}{2}$ to 5 percent with a guaranty of not less than 3 percent. The proceeds may be applied to purchase an annuity, whether for life, for a term of years or for a fixed term and life thereafter. If the insured has a definite plan in view he can instruct the insurance company to carry

it out. If he wishes to leave the proceeds to a trustee with discretionary powers he can best do this through an insurance trust. The great trust companies of the country have been actively recommending life insurance and especially this form of trust for their well to do clients. Life insurance companies will not generally accept discretionary powers in handling such funds; this is the function of a trust company.

Industrial life insurance has also shown a most unusual growth in modern times. Started in England in 1853, the principle was soon introduced into Germany, Austria, Switzerland, France, the United States and Japan; the first American company to write such policies was the Prudential in 1875. The chief appeal of this type of insurance is made to the urban working class population as a means of providing a fund for burial purposes. The average face value of industrial policies is now a little over $200, having risen gradually to this figure from an average of $110 in 1890. The chief characteristics of this form of insurance are the following. First, premiums are fixed for all ages at five cents and multiples per week, the adjustment for age being made in the amount of the insurance written. Second, premiums are payable weekly and are collected by agents who call at the homes. Third, the policies have no cash or other surrender values in the early years but usually acquire such values after they have been ten years in force. Fourth, the entire family down to the youngest infant can be insured. Under the New York law the maximum insurance in infancy is $100 to the age of one, which increases $100 with each year of age to $1500 at the age of fourteen to fifteen. Fifth, the system of agency compensation is quite different from that of the ordinary branch, being a percentage collection fee, called the debit, based on the weekly collections plus x times the increase in the amount of such collections. The agent gets compensation for new premiums only as the total collections of his district increase. The volume of such business in force in the United States is shown in Table v.

The nature of industrial insurance, whereby premiums are collected from door to door and in small individual amounts, necessarily causes the expense rate to be high in relation to other forms of life insurance. In addition to this collection expense the small individual unit makes for additional cost; also holders of such policies are subject to a much higher rate of mortality. Facilities are granted to industrial policyholders to pay their premiums voluntarily at branch offices and thereby obtain a 10 percent reduction in the premium; this method is fairly widely used. In the vast majority of cases, however, the system of collecting from door to door is followed. The lapse rate of industrial policies is noticeably higher than ordinary business because of the way in which such policies are written. A large number of the lapses take place shortly after the insurance is written; the companies are trying to devise means of avoiding this wastage, just as they try to reduce the collection expense. The industrial insurance agent is closely supervised and works long and exacting hours, for which he receives no more than a modest compensation.

TABLE V

INDUSTRIAL INSURANCE IN THE UNITED STATES, 1880–1931

YEAR	NUMBER OF POLICIES (in 1000)	INSURANCE IN FORCE (in $1000)
1880	228	19,591
1890	3,875	428,037
1900	11,216	1,468,475
1910	23,044	3,179,490
1920	49,179	7,121,380
1930	89,183	18,274,969
1931	88,192	18,261,886

Source: *Insurance Year: Life Insurance*, for 1931–32, p. A–333.

Various states in the United States as well as some foreign countries have offered life insurance facilities. In general it may be stated that unless the plan is subsidized by the state and a regular selling organization maintained, such plans have been unsuccessful, and many of them have been discarded or allowed to become inactive. In two or three instances state insurance has achieved a fair degree of success. The outstanding case is that of New Zealand, which conducts a life insurance department in all respects similar to regular life insurance companies, having agents who are compensated by commissions. The life insurance department uses the facilities of the postal service, for which it pays for any insurance work done. New Zealand has avoided granting to its insurance department special favors which are not available to private carriers. The result is that mutual life insurance companies in the same territory are competing on favorable terms with the government agency. In Massachusetts by the end of 1931 each of twenty savings banks was insur-

ing residents of the state up to $1000, making possible a total individual insurance of $20,000. Some of the overhead expense has been borne by the state; individual propagandists and salaried employees have been furnished by interested parties, and taxation favors have been granted. In 1931 these twenty savings banks were carrying 101,000 policies to the amount of $90,960,000. In Japan industrial insurance is a state monopoly which is run in conjunction with the postal department. Letter carriers act as collectors and a large volume of insurance has been written. Italy in 1912 decreed that life insurance in all branches be a state monopoly and has taken over the business of American and other foreign companies.

HENRY MOIR

See: INSURANCE; SOCIAL INSURANCE; GROUP INSURANCE; ANNUITIES; HEALTH INSURANCE; HEALTH EDUCATION; LIFE EXTENSION MOVEMENT; FRIENDLY SOCIETIES; FRATERNAL ORDERS; MUTUAL AID SOCIETIES; OLD AGE; MORTALITY; POPULATION; MARINE INSURANCE; WAR RISK INSURANCE; GOVERNMENT REGULATION OF INDUSTRY; COOPERATION TAXES.

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LILBURNE, JOHN (*c.* 1616–57), British political and social reformer. Leader of the Leveller party during the Interregnum, Lilburne's special distinction lay in his combination of progressive thought with vigorous action. He was the enemy of what he conceived to be oppression, whatever its aspect. Before the civil wars he took up the cudgels against episcopacy; during the wars he fought on Parliament's side but resigned his commission in 1645 after his refusal to take the covenant according to the New Model Ordinance. He came into conflict with both houses of Parliament because of his outspoken criticism of their political and religious policy. From 1645

onward he spent considerable time in prison, whence he issued a continuous stream of pamphlets, such as *England's Birth-right Justified against All Arbitrary Usurpation, Whether Regall or Parliamentary, or under What Vizor Soever* (London 1645) and *London's Liberty in Chains Discovered* (London 1646). Formulating under the pressure of his personal experiences the doctrines of extreme political democracy which had always been implicit in his outlook and temperament, he became during 1647 the leading spirit and one of the organizers of the Leveller party, the first English radicals (*see* LEVELLERS). He was a member of the committee set up to frame the Agreement of the People, in which was set forth a series of political reforms based on the inalienable rights of the individual. The publication of a pamphlet entitled *An Impeachment of High Treason against Oliver Cromwell and Henry Ireton* (London 1649) led to his trial on a charge of attempting to overthrow the government. He made a speech in his own defense and his acquittal was received with tremendous enthusiasm, a medal being struck to commemorate the event. He was banished in 1652 and returned only to be rearrested. His second trial in 1653 roused even more popular interest than the first. By his practise as much as by his theories Lilburne became the chief disseminator of radical doctrines in the Interregnum period.

M. JAMES

Other important works: *Jonah's Cry Out of the Whale's Belly* (London 1647); *A Defiance to Tyrants* (London 1648); *England's New Chains Discovered* (London 1648–49).

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LILIENBLUM, MOSES LEB (1843–1910), Zionist publicist and Hebrew writer. Lilienblum was born in Lithuania, which was then part of the Russian Empire, and his life is typical of the later period of the Jewish enlightenment, or *haskalah*, in Russia. He began in the liberal days of Alexander II with a fight against the dominance of the Talmud, pleading for a reform of the rabbinic laws in the spirit of the new age. Persecuted by the orthodox Jews, he moved to Odessa and soon came to see the shortcomings of the *haskalah* in undermining the old folk virtues without producing positive values in their stead. His disillusionment was depicted with bitter outspokenness in his autobiography, *Chattoth neurim* (The sins of youth, 2 vols., Vienna 1876), his best piece of writing. Influenced by the positivist utilitarian and socialist doctrines of Chernyshevsky and Pisarev, he attacked the Jewish educational ideas of both the rabbis and the modern *haskalah* as equally remote from life; instead of furthering useful studies and productive occupations they breed idleness and poverty. He declared that national distinctions are but accidental and conventional and that in the future all peoples will be merged into a tribeless humanity. From these cosmopolitan dreams he was shaken in 1881, when with the accession of Alexander III a period of reaction set in and a wave of pogroms swept over Russia. The effect of those days he described in *Derech teshuvah* (Road of return, Warsaw 1899). Like a sudden illumination the thought came to him that the Jews are aliens everywhere and that their only salvation lies in being domiciled once again upon their ancestral soil. His positivist philosophy also contributed to his conversion to Zionism, and he threw himself wholeheartedly into the *Hovevei Zion* (Lovers of Zion) movement. Opposing the spiritual Zionism of Ahad Ha'am he demanded a practical attitude in the colonization of Palestine: Palestine should be restored not for the sake of Hebrew culture but in order to lift the Jewish people out of its political degradation. This seemed possible to him even without political independence, for what mattered was not government but "historic citizenship" upon the soil of a homeland.

SHALOM SPIEGEL

Works: *Kol kitbe M. L. Lilienblum*, 4 vols. (Cracow and Odessa 1910–13).

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LILIENFELD-TOAILLES, PAVEL FEDOROVICH (Paul von Lilienfeld) (1829–1903), Russian sociologist. Lilienfeld, the most extreme representative of nineteenth century sociological organicism, was the descendant of a noble Swedish family which had settled in Livonia. He was born in Białystock. After studying at St. Petersburg he held important Russian judicial posts and was for seventeen years gov-

ernor of Kurland. As an avocation he engaged in much sociological writing, chiefly in German, although his first important works and the first version of his magnum opus, usually known as *Gedanken über die Socialwissenschaft der Zukunft*, were written in Russian and he wrote also in French. As president of the Institut International de Sociologie from 1897 to 1898 he officiated at the third International Sociological Congress.

In comparison with Lilienfeld, whose work is based on the assumption that human society is a "real organism," Spencer and Schäffle, the other prominent organicists, were very cautious indeed. Lilienfeld's work collapses completely if the assumption of organismic homology which he used is destroyed. He was quite aware of the extreme nature of his organicism and of the differences between himself and other writers.

His later works were little more than variations on the organismic motif set by the *Gedanken*, and he regarded his doctrine that society is a real organism as his great contribution to sociology. His writings are filled with the terminology of scientific biology; material culture, for example, is "social intercellular substance." Although Lilienfeld possessed considerable erudition (his writings abound with references to Darwin, Tylor, Waitz and others not usually cited as early as the 1870's), his intellectual gifts were not of the highest order. Much of his work is mere journalistic prattle. His importance was negative; for sociologists of the late nineteenth century he was a horrible example of the consequence of taking seriously his own dictum, *Sociologus nemo nisi biologus*.

HOWARD BECKER

Important works: Under pseudonym Lileyewa, *Osnovniya nachala politicheskoi ekonomii* (Fundamental principles of political economy) (St. Petersburg 1860); under initials P. L., *Misli o sotsial'noi nauke Budushchago* (St. Petersburg 1872), enlarged German ed. as *Gedanken über die Socialwissenschaft der Zukunft*, 5 vols. (Mitau 1873–81); under name Paul de Lilienfeld, *La pathologie sociale* (Paris 1896); *Zur Vertheidigung der organischen Methode in der Sociologie* (Berlin 1898).

Consult: Henne am Rhyn, Otto, *Paul von Lilienfeld*, Deutsche Denker, vol. vi (Danzig 1890); Meyer, B. H., "Four Synthesists: Cross-sections from Comte, Spencer, Lilienfeld and Schäffle" in *American Journal of Sociology*, vol. vi (1900–01) 20–28; Barth, Paul, *Die Philosophie der Geschichte als Soziologie* (3rd and 4th eds. Leipsic 1922) p. 359–72; Coker, F. W., *Organismic Theories of the State*, Columbia University, Studies in History, Economics and Public Law, vol. xxxviii, no. 2 (New York 1910) p. 139–53; Worms, René, in *Revue internationale de sociologie*, vol. xi (1903) 265–67.

LIMITATION OF ACTIONS, in Anglo-American law, denotes the requirement that judicial relief be sought within a fixed period after the occasion for it arises. The term prescription has been variously used in this connection in different legal systems. In the modern civil law, which makes the most elaborate distinctions, if a claim to property is not asserted judicially within a fixed period, the claimant's rights are extinguished (negative or extinctive prescription) and his adversary's claim confirmed (positive or acquisitive prescription). There has been much discussion as to whether the limitation requirement is remedial or substantive. As governing the commencement of actions it now appears to be remedial, and provisions relating to it are usually found in the American codes of civil procedure; but as a mode of acquiring ownership it seems to be a rule of property and as such is incorporated into most Romanesque civil codes. Modern legislation dealing with limitation of actions in reference to property has for its object the security of titles, which would be jeopardized if ownership could be questioned at any time without limitation. The general rationale of these rules has been interpreted as proceeding either from grounds of public policy or from a presumption that legal title had been acquired in the elapsed time, since no suit had been brought sooner. In its reference to personal rights and to crimes the theory is much the same as that of bankruptcy laws—the debtor should not be pursued forever. In most legal systems the limitation concept is now expressed in statutory form, and in English law it must be so expressed; but such was not always the case.

It has been said that primitive peoples have no statute of limitations, but only in the barest literal sense is this true. The underlying concept appears in early society. There is little doubt that the limitation concept arose while law was still customary and while self-redress was still tolerated, for it constituted a restriction upon the latter. The lingering tradition of self-redress may indeed have operated to delay the embodiment of limitations in the written law.

Limitation is older as a substantive rule of property than as a remedial rule. In fact the limitation seems connected with the origin of private property. Primitive ownership appears to have resulted from contact with an object, which thus became a part of one's personality. If there was no other claimant, the object became at once the property of the one making

the contact. (In Roman law this concept developed into that mode of acquisition called *occupatio*, which feudal law rejected.) If, however, another claimed the object he must assert his claim with reasonable promptness or suffer its forfeiture. It was as *usucapio* (taking by use) that the concept was first fully worked out. According to Loria the Roman *usucapio* was intended to reward economic initiative by penalizing landlord absenteeism. In Sohm's view, *usucapio* in classical Roman law performed a twofold function: it transformed bonitary (equitable) ownership into quiritary (legal); and it protected the title of an individual who had acquired a thing *bona fide* from a non-owner. Both Gaius and Justinian speak in their Institutes of the rule as designed to prevent an overlong uncertainty regarding ownership. Long before either Demosthenes had stressed the unreasonableness of requiring a possessor to preserve his evidence forever. *Usucapio* was a rule of Roman law earlier even than the Twelve Tables. That collection provided for acquiring ownership by possession of two years for immovables or one for other property. The principle was still recognized as late as the time of Constantine, who, however, lengthened the periods to forty years.

Caesar and Tacitus note that the Germans were wont to change each year the allotments of their lands; this system together with their nomadic life gave little chance for a custom like *usucapio* to grow up among them. It was not until about the ninth century that it began to develop and it appeared then in the form of the *Verschweigung*, a custom eventually enforced by a judicial peace ban which required all who impugned any existing condition to do so within a fixed period, usually "a year and a day," but lengthened later. Among the Franks this took the form of the "citation seisin," by which a claimant to land was judicially called upon to assert his claim within the prescribed period or suffer "acquiescent preclusion." Ultimately the system spread over most of western Europe. It prevailed in France for centuries, and in mediaeval Germany as *Auflassung* it is said to have been the exclusive "mode of assurance." All this, however, was restricted to land. The general doctrine of *usucapio* was not adopted in Germany until the reception of Roman law. The present German Civil Code recognizes *usucapio* as to movables, but as to immovables only for curing defective entries in the registry.

Anglo-Saxon law like the other Germanic systems did not include the concept of *usucapio*. Not even the "fine and recovery," or fictitious compromise, followed by seisin, appears before the Conquest. But William the Conqueror early in his reign decreed that open possession for "a year and a day" was a sufficient defense to another's claim against the finder of an object. Under the Nottingham charter from Henry II if a serf or other person "dwell in the borough a year and a day in time of peace, no one except the king shall have any right in him." The same period afforded the "preclusive bar" fixed by the fine and recovery, and Maitland concludes that this was "originally the only possession that could become ownership by the lapse of a year and a day." In Bracton's time the period seems to have been shortened. Bracton wrote of *usucaptio* (sic) and considered *longa possessio* sufficient for ownership. He applied the principle especially to incorporeal rights, like those of common, which had been protected by a plea of seisin since before the Conquest. The traditional view in England has been that extinctive prescription does not extend beyond incorporeal property, but it so extends under certain American statutes.

From a custom based on a natural presumption or designed to protect property rights it was a short step to one which required the timely assertion of other claims. In the Hebrew "book of the law" (seventh century B.C.), later incorporated into *Deuteronomy*, creditors are required to release their debtors at the end of every seventh year (XV: 1, 2). Demosthenes praises the principle in Attic law and attributes it to Solon. By the Twelve Tables not only tangible property but marital rights may be acquired by *usucapio*; and a claim against an alien is declared perpetual—i.e. he can never invoke a limitation—thus implying that there were limitations in claims against Romans. But, according to Hunter, Roman prescription as applied to rights in personam began when the praetor, introducing new actions, limited them to a fixed period, generally a year. If the action was of legislative origin it could be brought at any time, but the non-transmissibility of certain actions, not alone delictual ones but also certain contractual ones (e.g. those founded on a stipulation), afforded a species of limitation: a proceeding to enforce them had to be brought within the lifetime of one or both parties. As to delictual actions the same principle operated in English law down to the passage of Lord Campbell's Act in 1846, which allowed an action by the near relatives

of the deceased in the case of wrongful death. This act was generally followed in the United States. A rescript of Honorius and Theodosius in 424 fixed a limitation of thirty years for personal actions (those to enforce obligations) as well as those in rem; but for some actions a longer period was stipulated later.

In English law there appears to have been no procedural limitation until after the Conquest. In the following century there was a limitation for the writ of right, which could not go back to the end of the reign of Henry I (1135). The Assize of Novel Disseisin was limited in Glanville to the king's last passage to Normandy. Bracton appears to make *usucapio* applicable to all actions; but legislation on the subject proceeded: by the Statute of Merton [20 Hen. III, c. 8 (1235)] the limitation for a writ of right was brought down to the beginning of the reign of Henry II (1154); by that of Westminster I [3 Edw. I, c. 39 (1275)] it was further extended to the beginning of the reign of Richard I (1189), where it long remained. The act of 32 Hen. VIII [c. 2 (1540)] was framed on the Roman principle of fixing a period—thirty years of the defendant's own seisin or sixty of his ancestor's—to support a writ of right and fifty years for a possessory action and certain others. The statute of 21 Jac. I [c. 16(1623–24)] limited writs of formedon and, in effect, ejectment as well as personal actions. This was the first general English statute of limitations and it was extended to the colonies, including those of America. Meanwhile Chancery, through its doctrine of laches, applied the principle "from the beginning of this jurisdiction ... without the help of an act of parliament."

Before the time of Gaius the *praescriptio*, which was a note prefixed to the praetor's *formula* directing the trier of fact to dispose first of some preliminary question, was available to the defendant to raise various defenses. In the third century the defense of lapse of time (*praescriptio longi temporis*) was admissible, and eventually the term *praescriptio* came by metonymy to signify the limitation itself. Under Justinian *usucapio* and *praescriptio* were assimilated in usage (although strictly the former applied to movables alone), and the joint concept prevailed throughout the empire. *Praescriptio longi temporis* represented a limitation of from ten to twenty years for immovables, and *praescriptio longissimi temporis* thirty or forty years; the two periods later became known respectively as ordinary and extraordinary prescription.

The canonists appear to have taken over the Justinian law of prescription in so far as it was needed for their purposes but to have stressed the element of *bona fides* and the effect *in foro conscientiae*. Using the extraordinary prescription concept and certain references in the Digest to prescription whose origin extends beyond memory, the canonists devised what became known as immemorial prescription, dispensing with a specific period. Thus they raised a conclusive presumption of ownership and afforded a supplementary method of acquisition available when no shorter period was stipulated. This device played a large part in the development of feudal law.

The doctrine of immemorial prescription developed as a customary institution in French law. There extinctive prescription of thirty years was transformed by custom into *usucapio* and given precedence over ten or twenty years' prescription, the conditions of which were rather difficult to meet. By the sixteenth century the Justinianian concept of prescription appears in the *coutumes*. That of Paris, compiled by 1510 but existing in written form far earlier, embodied the concept with all its requisites except prescriptibility. The provisions of the *Code civil* are little more than an amplification of those of the *coutume*.

Before the end of the mediaeval period English law like the French and the feudal (from both of which it drew) took over immemorial prescription and its resulting presumption that a grant had been made before the time of legal memory. This had a profound influence upon rules of pleading and proof. Where such a prescriptive title was alleged, no inconsistent one could be pleaded without traversing (denying) the first. Later the claimant to such a title might plead a grant which had been lost and support it by proof of twenty years' user. This culminated in the doctrine that such proof raised the presumption of a grant; hence the courts often spoke of the statute of limitations as a statute of presumptions. But the later tendency of English thought is to regard this as a fiction which has outlived any usefulness it may have had. The courts now apply the statute on grounds of public policy rather than by reason of any presumption that the claim is unfounded. An exception exists in acts embodying the Torrens or similar systems of registering land titles, which usually provide or are construed to mean that ownership of the registered land may not be acquired by prescription; although under certain British decisions that mode of acquisition must

be expressly excepted. As regards other rights than those of property limitation and prescription usually coincide, and even in questions of limitation a claimant who loses his remedy virtually loses his right. In the words of Pollock and Maitland "every acquisition of seisin, however unjustifiable, at once begets title of a sort, title good against those who have no older seisin to rely upon."

Limitation of action in reference to crimes also has its origins in very early practise. The notion that offenders must be punished, if at all, within a reasonable time after committing their misdeeds, appears intimately connected with various provisions for the restriction of self-redress. Among the earliest of these is the severer punishment permitted when the offender is caught red handed. According to the Twelve Tables a thief caught under such circumstances could be slain or scourged and turned over to his victim; otherwise the owner was limited to an action for damages. Traces of the same notion are seen in the rule of "hot pursuit," during which the accused may be visited with the most extreme penalty, and in the Lombard restriction of private vengeance to one year, after which the king must fix the punishment. Under Justinian *crimina publica* had to be brought within twenty years, with exceptions for apostasy, for parricide and for substitution of offspring, and with shorter periods for specific offenses. Canon law looked with disfavor upon immunity not resulting from ecclesiastical absolution; it emphasized the element of moral guilt. The Roman notions reappeared in mediaeval Italian law, but the French *Code d'instruction criminelle* was the pioneer in reviving the full Roman idea. It provided a prescriptive period of ten years for the prosecution and twenty for the penalty, in case its execution was delayed after sentence. Other codes of criminal procedure and penal codes have adopted similar provisions. There is no general limitation of prosecutions or penalties in English law, although for special offenses, such as treason, embezzlement, larceny and smuggling, an indictment must be found within a specified time. Most of the states of the United States as well as the federal government have statutes providing limitations for virtually all offenses, with the general exception of murder. As a whole modern legislation proceeds on the theory that the interests of society are best served by requiring criminal prosecutions to be brought within a reasonable time or not at all; and that nothing substantial is gained by keeping an accused person or a suspect in long suspense.

Probably no limitation has operated uniformly as to all persons. In the Twelve Tables the mancipable property of a woman under tutelage was not subject to *usucapio* unless it had been delivered with her tutor's authorization. At a later time all those under tutelage were during its continuance exempt from *usucapio*. In the modern law the statute does not run against minors or the *non compos mentis* or in favor of those absent from the jurisdiction. Bracton for the first time in English law announced the broad rule *nullum tempus occurrit regi*, which still applies to all claims of the crown save statutory exceptions regarding realty. In republican countries the government and sometimes "the public" is substituted for the crown. The exemption is not available, however, without express enactment, to subdivisions of the state, such as municipal corporations.

For *usucapio* and prescription in the original sense, property, naturally tangible, was the sole subject matter. But the Twelve Tables recognized marital rights resulting from *usucapio*, and something of the sort existed in the early English law. Under Justinian a slave enjoying liberty in good faith for twenty years became free; a similar practise prevailed in the English and later Lombard systems. Under the *Forum judicum* fugitive slaves, even if belonging to the crown, could not be returned to servitude after fifty years. But Charlemagne denied the benefits of prescription to a fugitive slave and the inhibition extended to others through Germanic and feudal law. *Usucapio* of movables was recognized in the Twelve Tables but was not incorporated in the older Germanic law. In France the later Roman *usucapio* of three years did not become applicable because the reclaiming of movables was never permitted. After the fourteenth century a thirty-year prescription came to be established for movables.

From a very early period certain property has been treated as imprescriptible. Under the Twelve Tables stolen property was imprescriptible and also tombs, the latter affording later the nucleus of imprescriptible *res sacrae et religiosae*. A slave could not be acquired by prescription in early English and later Lombard law. The provision in the Twelve Tables which exempted from *usucapio* the five-foot space between neighboring fields was the forerunner of a rule which applied not only to highways but to public property in general. According to Gaius *usucapio* was not applicable to provincial soil

("since it belongs either to the Roman people or the emperor") or to a city's walls and gates. Justinian's Institutes makes imprescriptible the *fiscus* except when left by an heirless decedent. Taxes were never prescribed. Under modern law both civil and English public property is imprescriptible, but not the state's patrimonial property.

To acquire rights by prescription one must have possession, which in a legal sense includes physical control. By both civil and common law possession is either natural (actual) or civil (constructive) and the latter suffices prescriptively in each system. By both also the possession must be open and notorious. A clandestine possession confers no rights on the possessor because it affords no warning to the owner. The Twelve Tables imply, if they do not expressly state, the rule that *usucapio* requires continuous and uninterrupted possession for the prescribed period, for it is held that the wife's absence during three nights of the year prevents the acquisition of marital rights by *usus*. Justinian restates the rule and it reappears in both of the principal modern systems. This does not mean, however, that the same individual must continue in possession. Early Roman imperial legislation enabled an individual to claim the benefit of his grantor's possession, while Justinian gave the same effect to that of any predecessor. Such is the basis of the doctrine of "tacking," now generally prevalent. The Roman *Lex julia et plautia* forbade *usucapio* of property acquired by violence, and the doctrine was developed by the praetor; Justinian even made forcible recovery of one's own property a ground for losing it. English law goes less far but does require peaceable possession. Finally, possession must be adverse and exclusive, although if acquired by an agent or tenant it accrues to the principal's benefit. In the Roman law and its offshoots the possession usually must begin in good faith; that is, the possessor must believe himself the owner. The rule in the Twelve Tables forbidding *usucapio* of stolen goods was extended even to an innocent purchaser; but where the original possessor acted in good faith, a successor's knowledge that the property was another's did not affect the former's claim. Under the *Partidas*, *bona fides* was not required at all in case of thirty years' possession. The canon law deemed *bona fides* more important and insisted upon its continuance throughout. English law, on the other hand, does not require that the beginning of the user should be *bona fide*.

Under the law of Justinian the possessor for ordinary prescription must have *justus titulus*—he must have acquired by one of the recognized modes of transfering ownership; if the transfer was in some way defective, possession with the other requisites might cure it. In the modern civil law the required "just and proper title" usually means a document purporting to transfer ownership. There is no such requirement in Anglo-American law. But the later Roman law likewise recognized extraordinary prescription by which in a longer period ownership could be acquired without any of the recognized modes of transfer. This also appears in the modern civil law.

The duration of the period of limitation varies greatly. In the Twelve Tables the longest period required was two years (and that for immovables only), which was reduced to one for a decedent's land not yet occupied by the heir. The praetor in a dispute over a movable granted an interdict to the possessor for the greater part of the preceding year, and a year was the first period of limitation which the praetor introduced. Constantine prescribed forty years for acquiring ownership; Justinian required three years for movables and ten for immovables or twenty if the parties were absent. Extraordinary prescription required thirty and sometimes forty years. The *Forum judicum* adopted the period of thirty years as to actions but required fifty for ownership; while the *Partidas* in taking over the limitations of Justinian has been followed generally by the modern civil law codes. The earliest English statute of limitations fixed thirty and fifty years for actions involving realty. In the statute of 21 Jac. I the period was twenty years for real property actions, six for contractual and four for tortious, except for slander, which was two. The shorter period for the latter two indicates a purpose to discourage litigation upon such grounds and to permit it only while the grievance is fresh. American state legislation, which generally follows the statute of 21 Jac. I, is restricted by constitutional provisions and must always provide a reasonable time for utilizing the remedy.

In civil matters the period begins to run when the party entitled to relief could have instituted his action; a legislative attempt to start it earlier was declared inoperative (Webster *v.* Cooper, 55 U. S. 14 How. 488). If the right is conditional the condition must have occurred, and where a demand is necessary the period runs therefrom. In penal matters under the continental system the period for prosecutions begins to run from the commission of the offense or from the last of several successive acts constituting it.

This is also the American rule. For penalties the period runs from the date of conviction.

In regard to the interruption of the prescriptive process there has been great variation in practise. Justinian fixed a longer period of limitation where one of the parties was absent from the province, and the principle is retained in the modern civil law. Formerly in England the right of action accrued so as to start the running of the statute only as to one "within the realm" and "out of prison"; but these exceptions have been repealed. Absence of the defendant from the jurisdiction will generally suspend the statute as to him. Under Justinian prescription did not run against those below the age of puberty. English law subjected to the running of the statute only those "of full age, of sound mind . . . and, if a woman, unmarried." American legislation generally makes absence of either of the first two a ground for suspending statute. In the Roman law the period was interrupted by an acknowledgment of liability on the part of one claiming the limitations benefit. In modern English law there must be a promise to pay the debt, either unconditional or accompanied by a showing of performance of the condition, or an acknowledgment from which a promise may be implied. The institution of proceedings by the claimant constituted what was known in Roman law as a civil interruption, and the concept has been retained in the two modern western systems.

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See: PROCEDURE, LEGAL; CRIMINAL LAW; TORTS; CONTRACT; LAND TRANSFER.

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LIMITATION OF ARMAMENTS. The importance of the limitation of armaments in furthering the cause of international peace has long been recognized. A nation in a state of industrial and military preparedness is much more willing to employ the processes of international adjudication in settling a dispute than a nation that has built up a powerful military machine eager to secure the initial advantage of striking the first blow. So long as the reduction of armaments does not take place, no machinery for the pacific settlement of disputes can be effective. Moreover the reduction of armaments would involve saving of enormous sums—sums which might well be used for more productive purposes.

Despite the economic burden of maintaining large military establishments no great power has been willing to run the risk of unilateral disarmament. The attitude of such a power toward disarmament whether unilaterally or by treaty is affected by the internal presence of munitions industries and military establishments. In the past at least some governments have desired to expand their navies as one means of increasing their foreign trade.

Theoretically, however, governments since the World War have expressed a willingness to reduce armaments by treaty provided the reduction would leave the relative security of each power unimpaired. Any limitation treaty removes or at least limits competition and uncertainty concerning armament levels and hence should add to the security of each power. Once achieved, the limitation of armaments even at a high level introduces a stabilizing factor into world politics and paves the way for genuine reduction in the future.

As early as the conclusion of the Seven Years' War and the Congress of Vienna attempts were made to secure limitation of armaments by treaty. The attempts failed, as did the efforts of the French government in 1831 and 1863. The initiative was taken next by the czar Alexander, who in his famous invitation to the First Hague Conference of 1899 stressed the oppressive burden of armaments and proposed that an agreement should be made providing for the "non-augmentation" of the armies, navies and war budgets of the respective powers for a term of years to be agreed upon. This proposal was too advanced, however, and the Hague conference could do no more than pass a resolution stating that the "restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind." The conference also passed a *voeu* that the governments examine the "possibility of an agreement" limiting armaments and budgets in the future. The Hague Conference of 1907 in addition to reaffirming the earlier resolution declared that "inasmuch as military expenditure has considerably increased in almost every country . . . it is eminently desirable that the Governments should resume the serious examination of this question." The rivalry between the Entente and the Triple Alliance, which led to the World War, prevented any such examination.

The experience of the World War led to renewed attempts to place some limitations on armaments. The Treaty of Versailles imposed drastic disarmament upon the defeated powers; it also declared (art. 8) "that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations" and entrusted to the Council of the League of Nations the task of drawing up plans of reduction, which should be subject to reconsideration at least every ten years. Members of the League also undertook to interchange full and frank information as to the scale of their armaments and military programs.

The first concrete steps toward realizing a general arms limitation were taken, however, not by the League but at the conference convened by the United States in Washington on November 12, 1921, which considered also important political questions dealing with the Orient. At the beginning of the sessions the American delegation proposed a drastic reduction in navies with regard for existing naval strengths. On February 6, 1922, the British Empire, the United States, France, Japan and Italy —the five naval powers invited to the conference—signed a Treaty for the Limitation of Naval Armaments which was duly ratified and entered into effect on August 21, 1923. The effect of this agreement was roughly to establish parity in capital ships between the British Empire and the United States, with corresponding ratios of strength for the other powers.

The Washington treaty provided that between 1923 and 1931, when replacements might begin, the status of the battleships of the five powers should be as follows:

	Capital Ships	Tons
British Empire	20	558,950
United States	18	525,850
Japan	10	301,320
France	10	221,170
Italy	10	182,800

The British Empire was allowed a somewhat larger tonnage and number in capital ships than the United States because a majority of its ships were of an older type, while the American vessels were superior in gun power. The acceptance of these figures meant a reduction by the British Empire, the United States and Japan of about 40 percent of their capital ship strength, built and building. Altogether seventy ships, built and building, were scrapped, the United States surrendering the most, thirty vessels of 820,540 tons. Neither France nor Italy was asked to scrap any existing tonnage because of the relatively small strength of their capital ships.

It was further agreed that replacements might begin in 1931 and proceed so that by 1942 the capital ships of the five naval powers would be as follows:

	Capital Ships	Tonnage	Ratio
United States	15	525,000	5
British Empire	15	525,000	5
Japan	9	315,000	3
France	5	175,000	1.67
Italy	5	175,000	1.67

The size of each new ship was limited to 35,000 tons and its guns to sixteen-inch caliber. The treaty also limited total tonnage in aircraft carriers to 135,000 each for the United States and the British Empire, 81,000 tons for Japan and 60,000 tons each for France and Italy. Finally, it was provided that in 1931 the United States might arrange for a conference to consider desirable changes in the treaty to meet possible "scientific and technical developments." The Washington treaty was to remain in force until December 31, 1936; and in case none of the contracting powers should have given notice two years before that date of its intention to terminate the treaty, it was to continue in force until the expiration of two years from the date on which a notice of termination was given. Within one year of the date on which a notice of termination should take effect, all the contracting powers would meet in conference.

Although the Washington conference thus limited the number of capital ships and aircraft carriers it failed to limit the number of the lighter and faster auxiliaries, such as cruisers, destroyers and submarines, which some naval experts now consider more useful than battleships. Others hold the battleship to be an obsolete arm, expensive beyond its worth, useful only for fighting other battleships and the easy prey of the submarine and the airplane. Originally the United States proposed a limitation in cruisers and destroyers substantially on the same ratios as adopted for capital ships. The French delegation, however, declared that it could not accept the subordinate position in regard to light cruisers, destroyers and submarines which it had accepted in capital ships, on the ground that these cheap and effective arms are peculiarly the weapons of the smaller naval powers. France demanded a minimum of 90,000 tons of submarines, which equaled the combined submarine tonnage for Great Britain and the United States. In view of its peculiar susceptibility to submarine attack the British government declined to sign any treaty authorizing this large submarine tonnage for France or to consider any limitation on auxiliary vessels capable of dealing with submarines.

Nevertheless, the conference concluded a treaty (which France did not ratify) recognizing "the practical impossibility of using submarines as commerce destroyers without violating . . . the requirements universally accepted by civilized nations for the protection of neutrals and noncombatants." Any person violating the principle of international law that merchant vessels cannot be seized without warning or sunk without providing for the safety of passengers and crews was made liable to punishment "as if for an act of piracy."

Following the Washington conference a new naval competition arose among the great powers in the building of non-treaty vessels, particularly the 10,000-ton cruiser carrying eight-inch guns. By the beginning of 1927 the British government had actually laid down thirteen of these large cruisers, while Japan had built four, France three and Italy and the United States each two. The British had taken the lead in this construction in an attempt to regain their pre-war cruiser strength, which had been reduced from 114 in 1914 to fifty-six in 1921.

Meanwhile in September, 1925, the Council

of the League of Nations had established a Preparatory Commission for a Disarmament Conference. During sessions of the commission in 1926 and 1927 a basic difference arose between the Anglo-American group, which believed that naval limitation could be arrived at independently of land limitation and that naval limitation should be made by categories, and a group headed by France, which contended that land and naval armament were interdependent and that as far as naval disarmament was concerned the principle of global tonnage should be followed, each state remaining free within the general limitation to allocate tonnage between different types of vessels as it chose. France, not wishing to build capital ships because of their heavy cost, preferred to concentrate tonnage in light cruisers and submarines. The Anglo-American powers opposed global limitation on the ground that it would lead to a continuance of competition within the general tonnage figures. When agreement appeared impossible, President Coolidge took the initiative in calling a conference at Geneva to achieve the limitation of naval auxiliaries. His invitation was accepted only by Great Britain and Japan.

The Geneva naval conference convened in June, 1927. After an acrimonious debate it broke up on August 4 without having arrived at any agreement. The reasons for failure were the insistence of the British government upon the right to maintain seventy cruisers, a figure which the United States did not wish to have to equal in order to achieve parity, and the insistence of the United States upon retaining freedom to maintain large cruisers with eight-inch guns, which American naval men considered necessary because the United States' lack of naval bases compels long cruises without refueling or supplying. The British with bases scattered about the world prefer to concentrate on larger numbers of lighter vessels. The failure of the Geneva conference inevitably exacerbated feeling between Great Britain and the United States, and efforts to find a formula in the famous Anglo-French compromise of July, 1928, to which the United States was not a party, made matters worse.

With the advent of President Hoover to office the United States made another effort to secure naval limitation through the League Preparatory Commission. In a series of conversations in October, 1929, between President Hoover and Prime Minister MacDonald of Great Britain a basis was laid for an agreement upon the cruiser question: the principle of parity was accepted by both governments and agreement was reached as to a method of defining parity.

The London Naval Conference, attended by the United States, Great Britain, France, Italy and Japan, was convened in London on January 21, 1930. After three months' negotiation a naval treaty was signed which not only amended certain provisions of the Washington treaty of 1922 but also provided for the limitation of all auxiliary craft belonging to the United States, Great Britain and Japan. So far as battleships are concerned, the three latter powers agreed to postpone the date for the laying down of new battleships from 1931 to 1936, thus creating a five-year holiday. They agreed also to scrap or otherwise dispose of a total of nine battleships within thirty months. Finally, the three powers agreed to limit tonnage for cruisers, destroyers and submarines as follows:

	United States	Great Britain	Japan
	(In thousands of tons)		
Cruisers*			
a	180.0	146.8	108.4
b	143.5	192.2	100.5
Destroyers	150.0	150.0	105.5
Submarines	52.7	52.7	52.7
Total	526.2	541.7	367.1

* "a" includes cruisers with guns of more than 6.1 inch caliber. "b" includes cruisers with guns of 6.1 inch caliber or less.

This formula was designed to give parity in auxiliary vessels between Great Britain and the United States. For although slightly larger tonnage is allotted to Great Britain than to the United States, the latter government is authorized to maintain a superior number of large cruisers.

The London naval treaty was unable to impose any restrictions upon the size of the auxiliary fleets of France and Italy because of Italy's demand for parity with France and France's refusal to accept it. The possibility therefore remained that France and Italy as a result of competition would expand their fleets so as to menace particularly in the Mediterranean Sea the position of the British navy, now limited by the London treaty. To protect against such an eventuality the treaty contains a safeguarding clause under which each of the three signatories is given the right to exceed the tonnage levels established for cruisers, destroyers and submarines if in its opinion new construction

by non-treaty powers affects the requirements of its national security. In case one party invokes this clause the other two parties are free to make a proportionate increase in their own tonnage. Independent Franco-Italian conversations after the conference were equally ineffective by May, 1932, in securing an agreement between these two countries.

As a result of the Washington and London conferences the capital ships and aircraft carriers of the five leading powers are limited by treaty, while every category of war vessel in the three leading navies of the world is limited. This is something of an achievement. On the other hand, the cruisers, destroyers and submarines in the French and Italian navies remain unlimited and the levels at which the navies of the three leading powers are fixed are unduly high. To build the navy authorized in the London treaty the United States would have to expend nearly a billion dollars over five years. Finally, competition still remains possible even in the case of vessels limited by treaty. This fact was vividly demonstrated with the launching of the *Deutschland* by the German government in May, 1931. This so-called "pocket battleship," having a displacement of 10,000 tons, a speed of twenty-six knots and a cruising radius of 10,000 miles and carrying eleven-inch guns, meets all the technical requirements of the limitations imposed by the Treaty of Versailles; nevertheless, it is considered by some experts to be as powerful as many battleships of much greater tonnage. Apparently the only means of preventing the development of such new vessels is by meticulous definition of the specifications of the types limited.

Within the two other major branches of armaments—land and air—no limitation agreements have yet been concluded. Nevertheless, as a result of the six sessions of the League Preparatory Commission for the Disarmament Conference between May, 1926, and December, 1930, a draft agreement covering all types of armaments was concluded and placed before the conference called by the League Council for February, 1932. This provided a skeleton agreement but did not contain the figures at which armaments should be limited. The draft treaty provided for the limitation of (1) personnel in military, naval and air forces; (2) airplanes by number and horse power; and (3) total annual expenditure on land, naval and air forces. The supervision of the treaty was to be entrusted to a Permanent Disarmament Commission. The draft treaty contained no provision for the limitation of land material, such as types of machine guns and rifles, nor did it attempt to fix the respective military strengths of each power. Moreover this treaty also excluded from limitation so-called trained reserves.

The problem of limiting land armaments is for a variety of reasons far more intricate than that of limiting navies. There are only a few types of naval vessels and these types are common to all naval powers. In the case of armies, however, two conflicting systems of recruiting are followed: the conscription system and the professional army system. The majority of the countries of the world employ the conscription system, under which all young men reaching a certain age are obliged to perform a period of military service. Upon the completion of this period of active training they return to civilian life but form part of a trained reserve liable to be called to the colors in case of any emergency. Other countries, notably England and the United States, follow the professional system, in which armies are voluntarily recruited for comparatively long periods of time. While this system may produce a highly efficient and mobile professional force it does not build up any trained reserves. In 1914 England could mobilize only 733,500 trained men in comparison with 3,580,000 mobilized by France under the trained reserve system. Germany in the same year was able to increase its army from the peacetime strength of 761,000 to a war strength of 5,000,000. The peace treaties required Germany and its former allies to abandon conscription in favor of the system of professional armies. Europe today therefore employs two different military systems; and for the purpose of a limitation agreement it is extremely difficult if not impossible to find a common denominator by which they may be compared. A limit on the number of men under arms at any given moment as established by the draft treaty means very little while trained reserves are excluded from limitation, unless the annual contingent of recruits is put under control.

As was demonstrated by the phenomenal development of machine guns and tanks during the World War, warfare is becoming rapidly mechanized; and an effective limitation agreement cannot therefore ignore the problem of material. Recognition of its importance led to the inclusion in the Treaty of Versailles of clauses prohibiting Germany from using large guns, tanks, military aircraft and submarines.

The obstacles confronting the limitation of material are formidable. The first is created by the problem of trained reserves. Nations following the conscription system cannot accept the same limitation upon material as nations maintaining professional armies, without automatically disarming their trained reserves. Secondly, no limitation of material can be effective if during times of peace governments are allowed to organize industrial establishments capable of turning out armaments and munitions in enormous quantities once war breaks out. If in one of two states which have agreed to maintain an equal number of tanks private enterprise manufactures as many tanks as it likes, the official tank limitation becomes illusory. A League of Nations committee has studied the question of limiting the private manufacture of arms; but so far no convention on the subject has been drafted. Such an achievement would be doubly useful, for if a method were found of restricting the profits of armament manufacture, one of the forces opposing effective limitation of arms would disappear.

The popular view that any highly industrialized nation can turn out munitions in wholesale fashion following the outbreak of war was disproved by the experience of Great Britain and the United States during the World War. Unless a policy of industrial preparation is deliberately adopted, there is a "conversion lag" of several years before a nation can be converted from a peacetime to a wartime basis. The object of any limitation treaty should be to extend this conversion lag and to prevent nations from adopting a policy of industrial preparedness. The armament establishments of each army must be limited and the manufacture of arms, whether by government or private enterprise, made to conform to this limitation. The draft treaty providing only for budgetary limitation of annual expenditures on arms is rendered largely ineffective by its failure to touch the material question.

Moreover an effective treaty must deal with the problem created by new inventions. Even should an agreement limiting the main existing types of arms be concluded, the balance would be upset and competition resumed if one nation invented a new weapon of war. Authorities such as Major Victor Lefebvre insist that it is only infrequently that new instruments of war are the by-product of industrial peacetime research. Rather they are the direct result of conscious military research, and moreover to convert an inspired flash of discovery into a proved weapon active development is usually required. In other words, few military inventions would be made if governments abolished their military research laboratories and if the great international scientific organizations pledged their members to devote themselves to peacetime activities and to refrain from perfecting new devices for taking human life.

In the important field of chemical warfare the draft treaty provides for abstention from the use in war of asphyxiating, poisonous or similar gases and of all analogous liquid substances or processes. Bacteriological methods of warfare are to be unreservedly abandoned. Opinions differ whether the use of poison gas is less humane than the use of bayonets and bullets. Moreover it may be doubted whether a government which violates its obligation not to engage in aggressive war will observe an agreement not to use poison gas. It is also to be doubted whether a nation fighting in self-defense should be denied the use of any weapon deemed necessary to resist aggression.

Despite the obligation of article 8 of the Covenant of the League of Nations, which requires League members to exchange "full and frank information" as to the scale of their armaments, the majority of governments represented at the League Preparatory Commission declined to admit the principle of publicity in regard to material. Even should a government accept limitations upon material, it would be difficult without some form of international supervision to prevent it from evading treaty restrictions. Yet as the case of the interallied commissions in Germany showed, outside investigation into such questions may arouse intense ill will. All that the League draft treaty proposes is that any party may lodge with the Disarmament Commission a complaint that another party is violating or endeavoring to violate the obligations accepted in the disarmament treaty. The commission is to report on the subject but is given no authority to decide the dispute.

Even where agreement has been reached that effectives, including trained reserves, material and military expenditure, should be limited, there remains the fundamental problem of fixing the comparative military strength of each nation —the question of ratios. A theoretical basis for the solution of this problem was presented to the League Temporary Mixed Commission on Armaments in 1921 by Lord Esher. It proposed to limit the unit size of armies in each country to

30,000 men and to determine the number of units for each country by its population, industrial strength and strategic needs. Thus it was proposed to give France six units and Italy four. Because of the difficulty in deciding how many units each state should have, the plan failed of adoption.

Fearful of the superior industrial strength of Germany, the French representatives at the League Preparatory Commission advanced another theory, that of war potential. Under this theory a nation having an inferior war potential, or industrial capacity, should be given a correspondingly larger military force. The theory of war potential was based upon the unsound view that a nation having large industrial resources may convert them immediately to warlike purposes: it was the French army that stemmed the German invasion in 1914—not the superior war potential of Great Britain.

The two most practicable methods of fixing ratios are: first, upon the basis of the status quo; secondly, upon the basis of equality for the great powers. The insuperable difficulty with the first method is that some nations are unwilling to freeze the status quo. The application of this principle in 1914 would have meant the perpetuation of the supremacy of the British navy, which the United States would not accept; the application of the principle today would mean the perpetuation of the supremacy of the French army and air forces, which Germany and Italy will not accept.

The other alternative presents almost as many difficulties. If due allowance is made for the military needs of the French and Italian colonies, it is conceivable that at some time in the future France, Germany and Italy will admit the principle of equality in effectives and material. So long, however, as the political problems of Europe remain unsolved, so long as France fears that Germany wishes to upset the peace settlement of 1919, it will refuse to surrender its present military superiority. On the other hand, Germany is not likely to be satisfied with equality with France when a policy of alliances virtually places the armies of Belgium, Poland, Czechoslovakia, Rumania and Jugoslavia under French command. Naval limitation was achieved at the Washington and London naval conferences only after political confidence between the American, British and Japanese governments had been established. Similarly the fundamental question of limiting land armament cannot be solved until there is a reconciliation between France and Germany and until international organization has been strengthened so as to provide each state with "security" against attack.

Realizing the difficulties of reaching an agreement according to the principle of either the status quo or equality, the World Disarmament Conference, which opened at Geneva on February 2, 1932, considered several new proposals. Here about twenty-eight governments supported the total abolition or the restriction of so-called aggressive weapons. It was argued that if weapons such as tanks could be abolished defensive fortifications and weapons would be strong enough to prevent invasion. Thus the abolition of aggressive weapons would automatically reduce the likelihood of aggressive war. Moreover this step would make possible an immediate saving in military expenditure, and it could be taken without attempting to solve the troublesome question of ratios. Opponents of the proposal declared, however, that it was impossible to distinguish between offensive and defensive weapons. During the Geneva debates the small powers contended that the battleship was "aggressive" and the submarine "defensive," the United States and Great Britain taking exactly the opposite position. It is stated also that a country called upon to defend itself must at some moment undertake a counteroffensive and that the only result of abolishing tanks and heavy artillery would be to prevent any decision and convert every war into an intolerable stalemate, entailing unnecessary loss of life. Moreover France could not abolish tanks and heavy artillery without at once reducing its superiority over Germany, since these weapons were denied to Germany by the Treaty of Versailles.

As its contribution to the disarmament conference the French government proposed the establishment of an international police force. The plan called for the establishment of an international civil air service to operate under League control all commercial airplanes above a certain tonnage. Likewise it called for the establishment of a small League army to be supplemented in time of need by national contingents. Finally, bombing planes would be exclusively in the hands of a League air force, while other "aggressive" weapons would be placed at the League's "disposal."

The French proposal to internationalize civil aviation had much to commend it. Under existing circumstances it seems impossible to limit military aviation because of the ease with which commercial airplanes may be converted for

military purposes. The creation of an international aviation company would meet this difficulty. Such a company would be interested not in advancing the ends of any government but in advancing commercial aviation in time of peace as well as war.

The other features of the project were a logical development of the principle of sanctions already embodied in the League Covenant. Nevertheless, in the present stage of international relations the French proposal is regarded by most governments as wholly impracticable. There is a danger that if an international police force is established before the system for pacific settlement of disputes is perfected, the force will become a means of perpetuating an unjust status quo and will fall under the control of a single power.

So far no proposal for the drastic reduction of any kind of armaments has met with success. This failure has been due largely to nationalist mistrust. A changed psychology will do something to remove this mistrust, but in the last analysis it is doubtful whether a new attitude toward this subject can be engendered until a world community perfecting new procedures and establishing new traditions has been developed. It would be a grave mistake, however, to abandon the present effort at disarmament until a world community has been established. Both developments must go hand in hand if either is to achieve success.

RAYMOND LESLIE BUELL

See: DISARMAMENT; PEACE MOVEMENTS; LEAGUE OF NATIONS; OUTLAWRY OF WAR; WAR; WARFARE; MILITARISM; ARMAMENTS; ARMY; NAVY; MOBILIZATION AND DEMOBILIZATION; CONSCRIPTION; MUNITIONS INDUSTRIES; ARMED MERCHANTMEN; SUBMARINE WARFARE; EXPENDITURES, PUBLIC.

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LINCOLN, ABRAHAM (1809–65), president of the United States. Abraham Lincoln, born in a Kentucky log cabin, was carried by the course of the westward movement across the Ohio River through Indiana and into central Illinois. His memory, however, long lingered fondly over his early days in Kentucky: "my state" he called it as late as 1856. Because of his humble origin the appeal of the frontier democracy which had elevated Andrew Jackson to the presidency should have gripped the young Illinois rail splitter. Yet thrown into political associations and soon into social contacts with a group to whom he proudly referred as "us Kentuckians," Lincoln chose to follow the standard of Henry Clay and to join the heterogeneous opposition which shortly became the Whig party. Even before it advanced positive principles or a definite program this party represented the combined forces of the propertied elements of the north and south, together with the traditions of wealth, intelligence and social standing. It was not at all surprising therefore that in 1843 when Lincoln was seeking nomination to Congress he was characterized by his political opponents as "the candidate of pride, wealth, and aristocratic family distinction."

Lincoln was early aroused by the inhumanity of the slave trade if not of slavery itself, but as he once said: "I bite my lips and keep quiet." He condemned the abolitionists as agitators who actually endangered the cause of freedom. During 1847–49 he served a single term in Congress, where he was active among the Wilmot Proviso foes of slavery extension; yet this did not prevent him from joining with a group of southern Whigs to name for the presidency General Taylor, who was a slaveholder, or from ridiculing the Free Soil party as being, like the Yankee peddler's pantaloons, "large enough for any

man, small enough for any boy." Even in 1854 when the Republican party was being created, he carefully held aloof from the movement and proclaimed the dying Whig remnant the true anti-Nebraska party. But by 1856 he had acquiesced in the inevitable and he took a prominent place in the Republican ranks. Meantime in his retirement from active politics Lincoln had been pondering the ethics of slavery and was becoming alarmed at the menace to "the white man's charter of freedom" which emanated from the ultra proslavery view that slavery was the normal status of the working classes. His "House Divided" speech delivered in 1858 sounded a warning of this danger. Nevertheless, he won the Republican nomination in 1860 because of his conservative views on slavery and was described by Alexander H. Stephens during the campaign as "just as good, safe and sound a man as Mr. Buchanan."

Both before and after his election Lincoln offered every reasonable guaranty to slavery as it existed in the southern states, but the Republican victory of 1860 was interpreted by the south as a sign that its peculiar institution was shortly to be attacked. The war which followed Lincoln envisaged as a conflict between two concepts of the role of labor. He had frankly declared his preference for a system "under which laborers can strike when they want to." He resented "the effort to place capital on an equal footing with, if not above, labor, in the structure of government." Southern secession constituted in effect an attack upon the rights of all working men; to him "the strongest bond of human sympathy, outside of the family relation, should be one uniting all working people, of all nations and tongues, and kindreds." There is little evidence that Lincoln foresaw the extraordinary industrial consequences for northern capital of a federal victory.

As a war president Lincoln found himself invested with dictatorial powers. Nor did he hesitate to use them. As stated in his own executive order of February 14, 1862: "He called into the field such military and naval forces, unauthorized by the existing laws, as seemed necessary. He directed measures to prevent the use of the Post Office for treasonable correspondence. He subjected passengers to and from foreign countries to new passport regulations, and he instituted a blockade, suspended the writ of habeas corpus in various places, and caused persons who were represented to him as being or about to engage in disloyal or treasonable practises to be arrested by special civil as well as military agencies, and detained in military custody. . . ." Despite these acts he sought to conciliate and control the most diverse forces. Generously disposed toward all southerners except the leaders of the Confederacy, he labored hard to please southern loyalists and at the same time to hold in check the rising tide of abolitionism in the north. More slowly than the dominant current of opinion there he moved toward a policy of emancipation. Northern Copperheadism had to be controlled; but while Lincoln permitted arbitrary arrests by important subordinates whose actions he could not afford to repudiate, he was only technically responsible for this limitation of the field of civil liberty and more than made up for this by restraining the forces which demanded the sweeping legislative and administrative suppression of freedom of speech and press. Perhaps there was no more significant item in his record than his action in revoking the order of General Burnside for the suspension of the Chicago *Times* and other papers, unless it was his wholesale release on parole of political prisoners by the executive order of February 14, 1862.

Lincoln's reconstruction policy was based essentially on the prompt restoration of the southern states to "their proper practical relation with the Union." The generosity of this program aroused the opposition of congressional spokesmen for the Republican party, who alarmed at the early readmission to Congress of the members of the seceded states before the attainment of the economic ends for which the war was being fought bluntly reminded the president "that the authority of Congress is paramount and must be respected; . . . he must confine himself to his executive duties . . . and leave political reorganization to Congress." This growing cleavage in the Republican ranks and the not unjustifiable insistence of the Democrats that the war had so far been a failure seemed to promise certain defeat for Lincoln in the 1864 campaign. The autumn, however, brought a number of notable victories in the field and Lincoln was returned to office by a handsome majority. That his reelection was likely only to complicate his problem of securing the continued cooperation of ardent northern leaders was clear from the developments of the ensuing winter and spring, when it became evident that former Copperhead critics were being attracted by his generous policy. To these and to conservative Republicans the martyred president

became "the Great Conciliator." But the northern radical Republicans, who at first could not conceal their relief at the removal of Lincoln from the helm, were soon creating the beginnings of the Lincoln myth, which credited him with a consistent and predestined devotion to the cause of abolition; by them he was proclaimed the "Great Emancipator" and thus he has remained for most Americans.

ARTHUR C. COLE

Works: *Abraham Lincoln; Complete Works; Comprising His Speeches, Letters, State Papers, and Miscellaneous Writings*, ed. by John G. Nicolay and John Hay, 2 vols. (New York 1894); *The Writings of Abraham Lincoln*, ed. by A. B. Lapsley, 8 vols. (New York 1905–06); *Uncollected Letters of Abraham Lincoln*, compiled by G. A. Tracy with introduction by Ida M. Tarbell (Boston 1917).

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LINGARD, JOHN (1771–1851), English historian. Lingard and Hume were the earliest modern historians of England who drew their information from original sources, and Lingard was the first to tell its story with real impartiality, notwithstanding his Catholic connections. At an early age he was given a scholarship in the English Catholic College at Douai and during his stay of eleven years was thoroughly educated in the classics, modern languages, philosophy and theology. Returning to England in 1793 he was for a short time tutor in a Catholic nobleman's family and then served for some years as teacher in the newly founded Crook Hall, Durham. In 1811 he was appointed Catholic pastor in the little village of Hornby in Lancashire, where he spent the remaining forty years of his life.

The material remains of early British church history in the neighborhood of Crook Hall and Hornby drew him to the study of that subject and in 1806 he published *The Antiquities of the Anglo-Saxon Church* (2 vols., Newcastle 1806; 5th ed. London 1858). These interests combined with his desire to correct what he considered Protestant misunderstanding of his church led him to undertake a general history of England, the *History of England from the First Invasion by the Romans to the Accession of William and Mary* (8 vols., London 1819–30; 7th ed., 10 vols., 1883). His object of reconciling differences between Catholics and Protestants is recognizable through the entire work. Issued by a Protestant publisher, it was even examined for infelicities before printing by a clergyman of the Church of England. The appearance in 1819 of the first three volumes, covering the Middle Ages, established his reputation; but as each successive volume appeared, covering periods of greater controversy, the attitude of strict impartiality became more difficult to preserve; and with the appearance of the eighth volume in 1830, bringing the work down to 1688, he recognized the impracticability of continuing it along the same lines and devoted the rest of his life to successive revisions and editions of his great work, to the writing of articles and pamphlets and to correspondence on the church problems of his time.

In the deep divisions of opinion and policy among English Catholics it was to be expected that the moderate nature of Lingard's work would be offensive to many. Nevertheless, it was well received by the great body of both Protestant and Catholic scholars, and the pope himself at one time ordered two hundred copies for distribution. In the Catholic controversies of the time Lingard took little part but aided in the various efforts, culminating in the Catholic emancipation of 1829, to secure for the Catholics a better political and social position in England. The sustained impartiality and evident learning of his work, the clarity of its style and its wide popularity doubtless had much to do with the increasing liberality of popular feeling in England toward Catholics.

EDWARD P. CHEYNEY

Consult: Haile, Martin, and Bonney, Edward, *Life and Letters of John Lingard* (London 1911); Gooch, G. P., *History and Historians in the Nineteenth Century* (London 1913) p. 284, 290–92.

LINGUET, SIMON NICHOLAS HENRI (1736–94), French lawyer, journalist and social theorist. Linguet, who came of a middle class family, had literary ambitions from early youth. At thirty he had already plunged deep into history, drama, verse, philosophy and politics. He had demanded reform of the legal system and of

taxation and had condemned the practise of massacring soldiers to make a despot's holiday. After winning the praise and support of Voltaire by his spectacular defense of some youths condemned to death in 1766 for the sole proved offense of reading the *Dictionnaire philosophique*, he became a famous lawyer admired for his eloquence and sought by distinguished clients. But in 1774 his legal career was abruptly ended by his disbarment as a result of his attack on the bench. Three years later he founded the important journal *Annales politiques, civiles et littéraires* (19 vols., 1777–92), which became a vehicle, supplementing his numerous pamphlets, for his unintermittent and versatile offensive against his contemporaries. The principal objects of Linguet's attack were the church, the rich, the economists and finally the philosophic ideal of political liberty. Keenly aware of the evils of the society in which he lived he contemned the remedies which were currently proposed. According to his political theory the state had no other object than to preserve property, defined by him as the claim of the few upon the labor of the many. Since property could originate and survive only through violence, the essence of the state was force. With vitriolic passion he flailed what he thought was the puerile idea that freedom could be won by the establishment of mere equality before the law. The *philosophes* and Anglomaniacs who entertained this idea completely overlooked the real evil, which was economic inequality. But Linguet, who was analyst rather than reformer, could see no escape from the situation and pessimistically recommended passive acquiescence as the only intelligent course. His ideas were either derided or condemned as a defense of despotism. In 1780 he was imprisoned in the Bastille, from which he was released two years later under sentence of exile. During the period of his exile, the greater part of which was passed in England, he published his pungent *Mémoires sur la Bastille* (London 1783, new ed. by H. Monin, Paris 1889; tr. by S. F. Mills Whitham, London 1927) and through the *Annales* maintained a running commentary on European events. After the fall of the Bastille he returned to France, but only to be guillotined in 1794 as one who had consorted with tyrants and defended despotism.

In his perception that economic facts are more important in the life of the individual than political background Linguet was far in advance of any other thinker of his age. When in *Théorie des lois civiles* (2 vols., London 1767; new ed., 3 vols., Paris 1774), perhaps his most important work, he declared that men could not be really free if "they must go upon their knees to a rich man to gain from him permission to increase his wealth," he was crudely foreshadowing the doctrine of surplus value. His fame died before him, but his ideas had an important influence on Karl Marx. They are in fact more in keeping with twentieth century thought than with eighteenth. It is not surprising therefore that there are signs of reawakening interest in Linguet.

H. R. G. GREAVES

Other important works: *La dîme royale* (Paris 1764, reprinted as *L'impôt territorial ou la dîme royale*, London 1787); *Histoire impartiale des Jésuites*, 2 vols. (Paris 1768); *Observations sur l'imprimé intitulé: Réponse des états de Bretagne au mémoire du duc d'Aiguillon* (Paris 1771); *Mémoires et plaidoyers*, 7 vols. (Amsterdam 1773; vols. i–ii, new ed., London 1787–88); *Essai philosophique sur le monachisme* (Paris 1775); *Théorie du libelle* (Amsterdam 1775); *Examen des ouvrages de M. de Voltaire* (Brussels 1788, new ed. Paris 1817), tr. by J. Boardman (London 1790); *La prophétie vérifiée* (Ghent 1789); *Lettre de M. Linguet au Comité patriotique de Bruxelles* (Brussels 1789); *Lettre à l'empereur Joseph II. sur la révolution du Brabant* (Brussels 1790); *Lettre de M. Linguet à un membre de la Société patriotique de Bruxelles* (Brussels 1790).

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LIPINSKY, VYACHESLAV (1882–1931), Ukrainian historian and nationalist leader. Lipinsky attended the *gymnasium* at Kiev and studied at the universities of Cracow and Geneva. Although by birth a Polish nobleman and by faith a Roman Catholic he identified himself in early youth with the cause of Ukrainian nationalism. In his first work, *Szlachta ukrainska i jej udział w życiu narodu ukrainskiego* (The Ukrainian nobility and its participation in the life of the Ukrainian people, Cracow 1909), he stressed the Ukrainian origin of the majority of the Polish nobility in the Ukraine and urged them to assume leadership in the movement toward a

Ukrainian renaissance. In 1918 he was sent by the hetman Skoropadski to Vienna as the first minister of the Ukrainian state; he continued for some time under the directorate which replaced the Skoropadski regime but, unable to agree with the political ideas of the new leadership, he resigned and spent the remainder of his life as a political émigré. In 1926 he was called to the Ukrainian Scientific Institute in Berlin, where he remained until 1928.

Lipinsky's chief claim to distinction rests on his original interpretation of the forces and ideals dominant in Ukrainian history. Departing from the traditional populist school in Ukrainian historiography, which interpreted the history of the country exclusively in terms of a continuous struggle of oppressed masses against the feudal exactions of a native and foreign nobility, he attempted to prove, first, that the recurrent uprisings of the Ukrainian masses were animated by the political ideal of the reestablishment of a Ukrainian state and, second, that the Ukrainian nobility played the most constructive part in the actual organization of these struggles. It was only after the collapse of the Khmelnitsky wars—the Ukraine's most heroic bid for political independence—that Ukrainian nobility succumbed to Polonization and Russification and the national ideal was deflected from the struggle for an independent state into the movement for cultural survival within the political boundaries of Russia, Poland and later also Austria-Hungary. It is the task of Ukrainian leaders, he insisted, particularly of the politically conscious nobility, to restore the original political ideal to the Ukrainian masses. Building upon his interpretation of Ukrainian history he evolved in his *Listi do brativ chliborobiv* (Letters to fellow agriculturists, reprinted Vienna 1929; first published in the collection *Chliborobska Ukraina*, Agricultural Ukraine, ed. by Lipinsky, 5 vols., Vienna 1920–25) an elaborate theory of the Ukrainian state, organized on a corporate basis and ruled by a monarchy based on a broad aristocracy, recruited from all classes of the people. Lipinsky's historical works were hailed by some as marking a new epoch in Ukrainian historiography, but his general interpretation and conclusions have been criticized by Hrushevsky.

NATHAN REICH

Other works: *Z dziejów Ukrainy* (in Polish) (From the Ukrainian past) (Cracow 1912), a collection of studies edited and written largly by Lipinsky, some of which were reprinted in revised form in his *Ukraina na perelomi 1657–1659* (Ukraine at the turning point) (Vienna 1920); *Religia i tserkva v istorii Ukrainy* (Religion and the church in Ukrainian history) (Philadelphia 1925).

Consult: Doroshenko, D., "Vjačeslav Lipinsky" in Ukrainisches wissenschaftliches Institut, Berlin, *Abhandlungen*, vol. iii (1931) 157–66, and *Ohlyad ukrainskoii istoriografii* (Prague 1923) p. 209–12.

LIPPERT, JULIUS (1839–1909), German sociologist and historian. After receiving training in history Lippert taught in Bohemia and Germany and served one term in the Austrian parliament and several in the Bohemian legislature. His first important works were in the field of comparative religion, followed by studies in the history of the family and in material culture, the results of which he synthesized in his greatest work, *Kulturgeschichte der Menschheit in ihrem organischen Aufbau*.

Although his method and point of view align him with Tylor, Morgan, Spencer and other members of the classical evolutionist school of anthropology and sociology, Lippert anticipated modern writers in his recognition of the role of cultural diffusion and in his emphasis on the superorganic nature of culture. The determinants of cultural phenomena were to him never biological or psychological factors such as race, heredity, genius or instincts but always cultural, especially economic, factors as these are conditioned by historical and geographical influences. He assigned to ideas, particularly religious ideas, an extremely important role in cultural evolution and consistently stressed the interrelation and interdependence of social phenomena. Lippert demonstrated the economic basis and superorganic character of human marriage and shed light on the confused problem of the relation between religion and magic by his original treatment of fetishism. His work has received wide recognition and has had influence among sociologists in Germany, Russia and in certain circles in the United States.

GEORGE P. MURDOCK

Important works: *Der Seelencult in seinen Beziehungen zur althebräischen Religion* (Berlin 1881); *Die Religionen der europäischen Culturvölker* (Berlin 1881); *Christenthum, Volksglaube und Volksbrauch* (Berlin 1882); *Allgemeine Geschichte des Priesterthums*, 2 vols. (Berlin 1883–84); *Die Geschichte der Familie* (Stuttgart 1884); *Kulturgeschichte der Menschheit in ihrem organischen Aufbau*, 2 vols. (Stuttgart 1886–87), tr. by G. P. Murdock as *The Evolution of Culture* (New York 1931); *Deutsche Sittengeschichte* (Leipsic 1889); *Socialgeschichte Böhmens in vorhussitischer Zeit*, 2 vols. (Vienna 1896–98).

Consult: J. P. Murdock's introduction to his translation of *Kulturgeschichte*, p. v–xxxii; autobiographical

sketch in *Deutsche Arbeit*, vol. v (1905–06) 25–34, tr. by A. W. Small in *American Journal of Sociology*, vol. xix (1913) 145–65.

LIPSIUS, JUSTUS HERMANN (1834–1920), German classical philologist and historian. Lipsius studied at the University of Leipsic and taught at the Nikolaischule in Leipsic from 1863 to 1877 and at the University of Leipsic from 1877 to 1914. His first writings were concerned with the Athenian orators. He revised the works of M. H. E. Meier and G. F. Schömann on Athenian legal procedures; but when Aristotle's treatise on the constitution of the Athenian state was discovered in 1891, he realized immediately that this work involved a change in the conception of Athenian legal procedures. His first efforts in this direction were contained in his revision (2 vols., Berlin 1897–1902) of G. F. Schömann's *Griechische Alterthümer*, originally published in 1855–59. His chief work, however, is *Das attische Recht und Rechtsverfahren mit Benützung des attischen Processes von M. H. E. Meier und G. F. Schömann* (3 vols., Leipsic 1905–15), which reveals a complete mastery of Attic sources as well as occasional utilization of other Greek legal data. As far as its method is concerned the book presents a commentary on the Athenian writers, particularly the orators, rather than a study of Greek law. The first volume is an introduction to the constitution of the courts of justice; the second deals with legal actions, which are classified as private and public and also in accordance with the authorities under whose jurisdiction they fall; while the third is devoted to legal procedures. The study is not concerned with the actual law or with the content of criminal and private law but rather with the question of legal actions and procedures. Actions moreover are described not from the point of view of their proper purposes but from that of competencies. As a result the work has only an antiquarian value and by no means affords an insight into the development of the legal aspect of Greek cultural life. Lipsius himself recognized this shortcoming, which reflects a lack not of ability but of proper method. In the preface to the last volume he suggested the desirability of a study of Greek rather than Athenian law, which, he maintained, should combine the methods of philology and jurisprudence.

EGON WEISS

Consult: Körte, A., "Worte zum Gedächtnis an Justus Hermann Lipsius" in Sächsische Akademie der Wissenschaft zu Leipsic, Philologisch-historische Klasse, *Berichte über die Verhandlungen*, vol. lxxiii (1921) 41*–50*; Poland, Franz, in *Biographisches Jahrbuch für Altertumskunde*, vol. xliv (1924) 1–36, with full list of the works of Lipsius.

LIPTON, SIR THOMAS JOHNSTONE (1850–1931), British merchant. Lipton, who had but a few years of formal schooling, worked as a boy in his father's small provision shop in Glasgow. On his twenty-first birthday he opened his own provision shop, where from the first he applied those modern principles of merchandising then being developed in England, on the continent and in the United States: careful buying for cash, good quality, attractive display, advertising, cash sales at small profit and rapid turnover. He was a pioneer in the use of intensive advertising, including what are now called ballyhoo methods. Lipton was also the most important pioneer of the chain store system in England; as soon as his capital permitted he opened other shops in other cities, and the number of Lipton markets all financed by the reinvestment of profits multiplied rapidly in Scotland, Ireland and England. A central depot in Glasgow, later moved to London, carried on considerable manufacturing. Wherever possible the Lipton organization bought direct from producers and also, particularly in later years, produced many of its own raw materials and manufactured many of its own products. In 1898 the business was incorporated for £2,000,000 as Lipton, Ltd., the company owning in addition to retail provision shops many tea, cocoa and rubber plantations in Ceylon and factories and warehouses in London and elsewhere. Lipton was probably the most important and successful of the British merchants who applied modern capitalist methods to merchandising.

MILDRED HARTSOUGH

Consult: "Leaves from the Lipton Logs," ed. by William Blackwood in *Saturday Evening Post*, vol. cciii (1930) August 16, 23, 30, September 6, 13, 20 and 27; *Stock Exchange Official Intelligence*, vol. xlix (London 1931) p. 833; *Stock Exchange Year-Book*, vol. lvii (London 1931) p. 2802–03.

LIQUIDITY. This term when applied to an article of wealth or a credit item denotes the possibility of raising cash upon it by selling it or pledging it as security for a loan; in reference to a business concern liquidity is measured by the availability of cash, whether direct and immediate or indirect and involving the conversion of some assets into cash to meet ordinary or extraordinary demands upon it. The assumption in

both cases is that the conversion can be carried out expeditiously without sacrifice of values and with slight cost and disruption of operations. Liquidity must be clearly distinguished from solvency; a concern with assets of a current exchange value equal to or greater than its liabilities to creditors may be either liquid or illiquid, depending upon the character and distribution of its assets.

All the problems of liquidity for ordinary articles of wealth are present also in connection with liquidity of credit instruments, which can therefore best serve as the basis of a general discussion. A credit instrument may be liquid by virtue of the self-liquidating character of the transaction underlying the credit, the marketability of the collateral or the marketability of the credit instrument itself.

A credit instrument involving a sale of goods is said to be self-liquidating when it is assumed that the buyer can within the period of the credit sell the goods and thus acquire the funds necessary to discharge his debt at maturity. The principle of self-liquidation underlies the policies and practises of commercial banking. A commercial bank generally insists that borrowers' notes cover transactions or be secured by collateral which in the ordinary course of production and orderly marketing may at maturity provide the debtor with sufficient funds to repay the debt; that the margin of security be adequate to protect the bank during the full term of the loan; and that the collateral consist of warehouse receipts, bills of lading or similar documents conveying or securing title to non-perishable and readily marketable staple products or that it be a chattel mortgage or other like instrument giving a prior lien upon livestock which is being fattened for market. Of course the fact that the instrument is tied to a specific transaction does not assure its liquidation, first, because its face amount is consonant with the current price level of the commodity involved, which may be unduly inflated at the time by this and similar transactions, and, second, because its actual liquidating power rests not in the transaction itself but in the buyer's future operations or in lieu thereof in the seller's; the buyer also may meet his obligation with funds derived from an outside source and not from the sale of the goods bought. The liquidity of the instrument therefore rests ultimately upon the credit of the buyer and upon the marketability of the commodity; that is, in the ideal case upon the presence of ready markets with such frequent quotations of price as to make the price easily and definitely ascertainable and the commodity itself easy to realize upon by sale at any time. If business conditions are stable and the purchase underlying the credit is not too speculative, the risk involved in credits of this type is small; for this reason such credits rank well in liquidity.

There is a related but different type of liquidity when the instrument is collateralized by readily salable securities but does not arise out of a sale in the ordinary course of production and marketing, does not possess a maturity related in any way to the turnover of goods and represents what is probably a speculative credit. The liquidity of such loans rests upon the organizational development of the market for the collateral: the size of the clientele of buyers and sellers, the frequency of sales and consequent continuity of market, the standardization of the commodity and of the terms of sale and the possibility of selling short and of buying and selling for future delivery and on margin. The outstanding example of such credits is the brokers' loan, collateralized by stocks and bonds in the financial center. Most brokers' loans are call loans; if change of price of the collateral jeopardizes the safety of the loan, the lender calls upon the borrower for additional collateral and, if the latter fails to comply, sells the collateral.

Another type of liquidity is based upon the possibility of the outright disposition by sale or discount of the credit instrument itself rather than of the collateral which may support it. This form of liquidity requires a highly organized market for the paper, a big purchasing fund in the hands of buyers and standardized credit instruments of convenient form and denomination. In such a market the holder may readily dispose of a credit instrument at a price equal to face value minus interest to maturity. It is obvious that liquidity of this sort results from the shifting of liabilities to other lenders and may therefore be designated as shiftability. For short term credit instruments liquidity of this type is assured by the existence of a broad discount market, generally provided by a central bank, and of acceptance and commercial paper markets, where bankers' acceptances and commercial paper issued by large and well established concerns are bought through brokers or dealers by banks or private individuals for the temporary investment of surplus funds.

While the liquidity of a business concern rests upon the liquidity of its assets, it depends more specifically upon a type of financial management

which assures the regular inflow of funds in time to meet maturing obligations. A commercial or industrial house will sell goods on such terms as will match in maturity the debts it owes for materials, supplies and the like; a bank will enlarge its holdings of paper maturing before the Christmas holidays, when heavy withdrawals of deposits are certain to occur. Thus instead of each instrument providing for its own liquidation one account, bill or note receivable matures and provides funds to liquidate a maturing account, bill or note payable. In banking usage this practise is called rotation of the portfolio.

The liquidity of an ordinary business institution rests not only upon its ability to meet obligations as they mature but also upon its possession of a reserve of assets readily convertible into cash to allow for unexpected demands. The necessity for reserve liquidity rests upon and varies directly with the variability of economic life: the presence of cyclical, seasonal and irregular fluctuations requires from time to time the conversion of assets into cash to meet fortuitous changes in economic circumstances. The problem of reserve liquidity for an agricultural, industrial or commercial concern is easily solved where it has well established banking connections; assets which it is not desirable to sell or which do not command a ready market may afford sufficient security for a bank loan to tide the concern over an emergency. A banking institution is as a rule much more vitally concerned with liquidity than is an ordinary business establishment; this is a direct outcome of the nature of commercial banking operations, in which demand liabilities are balanced to a large extent by assets of short term maturity. Moreover the liquidity of banks is vastly more important to the business community than that of its other constituents; for banks provide the mechanism which assures the smooth circulation of short term credits and serve as the central repository of liquid funds. The liquidity of its banks is an essential prerequisite for liquidity of all other business enterprise in a community; it is equally true, however, that the liquidity of the banks is based in the last resort upon the smooth functioning of the production and marketing machinery.

In general the degree of liquidity of the bank's assets should be in proportion to the probability of its needs for cash; thus the higher the proportion of demand liabilities to total liabilities, the more unstable the temperament of the community, the more homogeneous the circle of depositors and the larger the proportion of deposits owed to a few people or to other banks, the greater must this liquidity be. The liabilities which may cause a demand for cash differ in relative proportions as among individual banks in a country and as among the banks of countries as a whole, and the provisions for liquidity must vary accordingly. Of the two leading liabilities deposits bulk much larger than banknotes in the United States, Canada, England and Australia. In securing its liquidity an American bank is concerned therefore almost wholly with meeting deposit withdrawals. To do so the bank maintains an adequate cash reserve and selects carefully its loans, discounts and security investments. It is not necessary of course that all of these assets be highly liquid. The primary reserve, consisting of cash in vault and immediately available balances with other banks, should be sufficient to meet the probable maximum of ordinary daily net withdrawals; it should be supplemented by a secondary reserve consisting of highly liquid earning assets sufficient if liquidated to meet exceptionally large withdrawals due to season, sudden market turns or panicky runs for whatever reason. The secondary reserve may cover such items as government securities, first class listed active bonds, commercial paper and acceptances and other paper eligible for rediscount or for sale in the open discount market. Special provisions are made to meet the other liabilities: the ownership and pledge of United States bonds and lawful money to secure the immediate payment of national banknotes, the ownership and pledge of acceptable paper and securities to cover advances from correspondent banks and the Federal Reserve Bank and the pledge of collateral to support the customers' liability for acceptances executed for them by the bank.

The cardinal principle of English commercial banking as developed in practise and in the writings of its theorists was an insistence that commercial banks confine themselves exclusively to short term financing of a mercantile character and not supply fixed capital for industrial or other undertakings; it was argued that as long as a bank's assets consisted of cash and short term self-liquidating commercial paper the maturity and payment of one batch would provide funds for new loans and keep the bank's portfolio in a flexible form to meet the slight variations from time to time, and that the lending of any funds on mortgages would disrupt that smooth flow into and out of the bank and make it impossible

at times to meet demand liabilities. This doctrine, conceived at a time when bank liabilities consisted almost wholly of circulating demand notes and when securities and discount markets were young, poorly organized and undependable, became so strongly intrenched in theory and practise that it survived long after these conditions had passed and is still current at the present time. The English banks have therefore virtually no investment accounts and although they keep small primary reserves maintain a high state of liquidity through their large secondary reserves.

The American banks copied the English notion of commercial banking; the struggle to achieve liquidity through limitation of loans and discounts to short term self-liquidating paper was carried through the years by state and national systems and into the Federal Reserve, but in general it has represented an ideal impossible of achievement under American conditions for several reasons. The advances made by the thousands of local independent banks have been mainly to farmers rather than to urban distributors and in large part necessarily intermediate or long term loans secured, if at all, by growing crops, real estate or farm equipment, none of which has a ready market. The scarcity of capital under circumstances which called for the development of vast virgin resources compelled banks to extend capital loans, a practise to which they were led by the desire to make profits and by the appreciation of the duty of a bank to distribute credit in such a way as reasonably to meet the community's requirements. The prevalence of the open account, cash discount and single name paper system and the lack of a discount market made the liquidation of receivables through sale or rediscount very difficult, thus minimizing the difference in liquidity between capital and commercial loans. On the other hand, the improved organization of the securities market and the increased stability of earnings of corporate securities have raised their liquidity. In general as banks come to finance the ever widening diversity of economic activities it is impossible for them to abide by the mid-Victorian doctrines of liquidity. The portfolio must consist of a wide variety of paper and securities consonant with the "department store" type of organization and service rendered by modern banks. Banks must supply all the capital needs of an industry—for building and equipment of plant, purchase of materials and production and marketing of products; this they have been doing more and more, either directly or through affiliated institutions. On the continent the general bank has long functioned in this complete way, identifying itself closely with the institutions or industries it finances; and undoubtedly the English and American banks will gradually assume a similar role. Liquidity of the bank will thus become more involved with the stability and liquidity of the industry or industries financed.

The liquidity of one bank is generally dependent upon the liquidity of other banks in the system. Under normal conditions funds are not held idle outside of banks, and when deposited in banks they are quickly utilized in large part by loans and investment. Consequently when a bank contracts its holdings of acceptances and commercial paper, the debtor must either reduce his balance to pay off the paper or find a buyer elsewhere for a new issue to take up the old. If a bank calls its broker's loans, the broker finds another lender from whom he gets funds to pay the calling bank; if it proves necessary to liquidate the collateral, the buyer of the securities draws upon his balance, causing his bank to contract, or borrows funds elsewhere to pay for them. If a bank strengthens its cash position by borrowing from a correspondent, the latter may have to call other loans or sell securities or at least part with some liquid cash. It appears therefore that the improved liquidity of one institution may lower the liquidity of another and moreover that a simultaneous liquidation of call loans, commercial paper or other assets by all banks is impossible without sacrifice of values. In time of panic securities, both those owned and those held as collateral for loans, become unsalable in the hands of the banks; to sell would force a severe break in the market, with consequent disaster to customers and to the banks themselves. It is an interesting and significant fact that after the 1929 stock market crash in the United States the reporting member banks' loans on collateral, including both brokers' loans and direct loans to individual customers, amounted to substantially the same figure as before. In emergencies of this order it is highly advantageous if a central bank stands by with unused funds and lends freely to support the market. A basic principle of central bank policy as developed in the Bank of England is to stem panics by just such action; while in the pre-war panics in the United States the absence of such support was profoundly felt, in the 1929 panic the Federal Reserve Banks loaned freely to member banks, call loans remained liquid and interest rates did not rise above 6 percent.

In modern highly integrated banking systems the central bank is valuable as an agency assuring liquidity not only in times of panic and stress but also under normal circumstances. By rediscounting, lending or purchasing their assets from individual banks the central bank serves as the immediate or ultimate source of funds for the commercial banks of a country. In order to tap this source, however, the banks must so conduct their business as to have sufficient eligible and acceptable paper and securities and to keep their borrowings within the limit set by the central bank. The central bank, because of its public responsibility, tends to maintain a very liquid position. Its assets consist largely of gold and lawful money, the ultimate reserves of the banking system; of short term commercial paper, obtained by rediscounting for other banks or by open market purchase; and of short term government securities. The lending power of a central bank is much greater than that of an ordinary commercial bank; the only limitation upon its ability to issue notes, create deposits and rediscount or purchase paper is the danger of inflating the general price level or the securities market to a point at which the gold reserve is driven abroad or into hoarding, the reserve ratio is ominously low and a general financial collapse is imminent. Within these broad limits the central bank constitutes a defense of the liquidity of the system. Since it is a central bank extending credit to all parts of the country and to all lines of industry there is opportunity for a turnover of portfolio or the shifting of funds from region to region and from line to line as conditions require; but it need not rely upon such safeguards of liquidity, for it may freely create notes and deposits.

The extraordinary powers enjoyed by the central bank by virtue of its command of the pooled reserves of the country and of its right to issue notes do not protect it completely from the threat of illiquidity. The test of the central bank's liquidity occurs, however, not in meeting obligations in the domestic market but in responding to the call of foreign creditors in terms of the international currency, gold. Situations in which such a test cannot be withstood may be due to loans to foreign central banks or other foreign institutions which result in a continuous gold drain and become frozen; more often, however, the call from abroad upon the central bank's reserves merely reflects the position of the national economy, of whose liquidity it is the guardian, with reference to the world market. The outcome is the abandonment of the gold standard, that is, the admission of international illiquidity, and the careful management of financial relations with foreign countries in order to attain liquidity on a new basis. It is the fear of being forced to depart from the gold standard which sometimes prevents central banks from assuring as much liquidity in the domestic markets as appears necessary. In such cases resort is had to ad hoc organizations, such as the War Finance Corporation after the World War and the Reconstruction Finance Corporation in 1932; these organizations are able to obtain long term capital funds and lend them on what would otherwise be frozen assets, thus relieving the necessity of forced liquidation and postponing payments until more favorable times.

RAY B. WESTERFIELD

See: BANKING, COMMERCIAL; BANK RESERVES; CENTRAL BANKING; FEDERAL RESERVE SYSTEM; FINANCIAL STATEMENTS.

Consult: Dunbar, C. F., *The Theory and History of Banking* (5th ed. New York 1929); Anderson, B. M., Jr., *The Value of Money* (New York 1917) ch. xxiv; Moulton, H. G., "Commercial Banking and Capital Formation" in *Journal of Political Economy*, vol. xxvi (1918) 484–508, 638–63, 705–31, and 849–81; Mitchell, Waldo F., *The Uses of Bank Funds* (Chicago 1925); Watkins, Leonard L., *Bankers' Balances* (Chicago 1929); Atkins, P. M., *Bank Secondary Reserves and Investment Policies* (New York 1930); Weber, Adolf, *Depositenbanken und Spekulationsbanken* (3rd ed. Munich 1922); Mering, Otto von, *Die Liquidität der deutschen Kreditbanken* (Jena 1916); Zentner, G., *Das Liquiditätsproblem in der industriellen Unternehmung*, Betriebs- und finanzwirtschaftliche Forschungen, 2nd ser., no. 58 (Berlin 1932).

LIQUOR INDUSTRY. The universal prevalence of alcoholic beverages in primitive African culture is sometimes explained by the scarcity and uncertainty of pure water. But the primitive Gauls and Teutons, who had no lack of good drinking water, brewed a dark beer for daily consumption. In primitive societies generally alcoholic beverages have been used variously as a common drink, in ceremonial festivals and to stimulate merrymaking. Thus the Kiwai Papuans of British New Guinea prepare a peculiarly stupefying beverage from the root of a native plant, a small quantity of which renders the drinker unfit for anything but sleep. The desert dwelling Amerinds concocted a very heady drink by chewing beans and roots in a mouthful of water, expectorating the liquid mash into a skin container and then setting the mixture out into the sunlight for fermentation. On the other

hand, some primitive African tribes brew their beer by a process of malting and mashing.

Ancient Babylonian records from the time of Sargon I depict the process of brewing beer from cereals and show plainly that beer was used as a household beverage. That the dispensing of liquor was a common practise in this ancient society is indicated in the Code of Hammurabi (*c.* 2100 B.C.), in which are contained decrees regulating the activities of tavern keepers. In Egypt as far back as the Old Empire the making of wine and beer was evidently common; the same was true among the ancient Hebrews, as evidenced in *Genesis* (IX: 20–21): "And Noah began to be a husbandman, and he planted a vineyard: and he drank of the wine, and was drunken . . . ." Wine making was a major industry in Greek and Roman civilizations; indeed the whole Mediterranean area was almost one vast vineyard. The fragrance and taste of wines stamped their locality; wines from Lesbos, Chios, Sicily, Samos and Thrace were praised by poets and sought after by connoisseurs. Wine was a common retail and wholesale commodity and the subject matter of commercial treaties.

During the early Middle Ages beer and wine were produced for local consumption. Almost every manorial establishment had its brewhouse, while the wine presses were a source of feudal payments. The monks also were brewers and vintners. It was in the monasteries that the mysteries of the arts of brewing and wine making, which later became the basis of one of the most important handicrafts of the period, were developed. Early in the Christian era the monks had taught the primitive Gauls and Teutons to grow grapes and to ferment wine; so also they now taught the new class of craftsmen the art of wine and beer making. With the growth of the free cities and with the expansion of European trade the manufacture of alcoholic beverages became a leading industry, which was organized in the familiar pattern of the guild and town economy. Craft guilds established rules of apprenticeship, limited competition, set standards of quality and fixed prices. Merchant guilds controlled export and import trading, sought and obtained special privileges in trade centers, regulated commercial practises and as a result waxed rich and powerful. By the fourteenth century the trade in wine and beer had reached significant proportions. Thus a large part of the commerce of the Hansa cities was in beer and wine; it may almost be said that the prosperity of Hamburg was built on beer, for its alcoholic wares even reached Asia by way of Novgorod. Wine flowed from the southern isles of the Mediterranean to the northernmost part of Europe. The beginnings of the English mercantile marine may be laid to the wine trade. After the wine merchants of Bordeaux had ceased trading in English ports because of the many restrictions imposed upon them, English merchants were forced to build their own ships to secure the wine England demanded. Duties on wine moreover were weapons in the struggle for national dominance, and eighteenth century England, for example, placed discriminatory duties on French wines in order to cripple the commercial power of its rival. Throughout Europe beer and wine were common beverages plentiful in supply and low in price.

It was during the Middle Ages too that distilled liquor was first produced. The distillation of liquids had been known to the ancient Chinese, Hindus, Assyrians and Greeks, but there is no record that the process was applied to the production of beverages. By the twelfth century, however, whisky was already in use in Ireland and probably also in Scotland; brandy appeared a little later in Spain and France; and in the fifteenth century it was brought from Italy into England and Germany. The same period also saw an increase in the number of different wine spirits. A Benedictine monk produced a wine spirit of rare taste, dedicated it to God and called it "Benedictine, *Deo Optimo Maximo*." It is interesting to note that the manufacture of whisky was one of the earliest capitalistic enterprises. Whisky distilling was made a free pursuit in England in the seventeenth century, and a discriminatory tax laid on malt and ale to encourage the consumption of spirits made from English corn created a profitable field of enterprise for whisky distillers.

Not unlike other industries the liquor industry was subjected to a superstructure of regulations. In addition to the guild rules there were various municipal ordinances and crown decrees, which, as contradictory as they were varied, reflected the interests of many political and trade groups. Some codes sought to safeguard the monopoly of the various crafts engaged in the liquor trade; others fixed trade practises and forbade technical innovations; and still others were designed for the protection of consumers. Since lords and nobles were interested in the traffic, it was natural that royal decrees should appear to add their weight to local ordinances. Such decrees usually prescribed

standards of quality, fixed prices and regulated the places of sale. Henry VII in 1495 empowered any two justices of the peace "to rejecte and put awey comen ale selling in Townes and places where they shall thinke convenyent, and to take suerties of the keepers of ale houses of their gode behavyng . . ." (11 Henry VII, c. 2.). Taxation too was variously motivated, the usual purposes being to secure revenue, to make control effective and to impose discriminatory favors and disadvantages.

In modern times the liquor industry has occupied only a secondary role in the economic life of nations. In the United States, for example, the investment in the liquor industry in 1914 was only $962,482,000, or slightly over 4 percent of the total capital value of manufacturing establishments, and wineries, distilleries and breweries employed 72,600 persons, less than 1 percent of the total industrial man power. With the exception of the Latin countries and such small areas as Tunis and Cyprus alcoholic beverages constitute a minute fraction of the import and export trade of modern nations. In France in the decade after the World War, while from 20 to 25 percent of the total exports of foodstuffs and drinks were alcoholic beverages, drink rarely accounted for more than 3 percent of the annual exports of the country.

The production of wine and spirits is highly localized. A line drawn to include Algeria, Morocco, Tunis, Italy, Spain, Portugal and all of France but its twelve northern and northwestern departments would enclose more than 80 percent of the world's vineyards. In 1900 total world production was approximately 158,400,000 hectoliters, of which the western Mediterranean area was responsible for approximately 150,000,000 hectoliters. In 1929 total world production was 177,600,000 hectoliters, while the western Mediterranean area produced 151,500,000 hectoliters.

The natural superiorities of soil and climate are usually advanced as the basis for this high degree of localization. On the other hand, areas which are not now devoted to intensive viniculture might become so if climate and soil were the only considerations; California, Argentina, Chile, Cape Colony in Africa, and Australia are all potential wine centers. It is interesting to remember that in the ancient world the eastern Mediterranean area was rich in grapes and wine while today production in that region is slight. It would seem that at least part of the explanation must be sought in those historical factors which have perpetuated wine and wine making as the traditional beverage and occupation of the inhabitants of the western Mediterranean area.

The manufacture of beer shows a similar concentration. The beer producing nations of the world are the United Kingdom and Germany. Until the World War beer produced by the United Kingdom, Germany, Austria and the United States (where the brewers were chiefly German) made up most of the world production; since the war, however, Austrian production has declined sharply, that of France and Belgium has greatly increased, while American beer manufacturing has been cut to about 30 percent of the pre-war figure because of the outlawing of alcoholic beverages by the Eighteenth Amendment. In 1900 the total world production of beer was approximately 237,354,000 hectoliters, of which the United Kingdom, Germany, Austria and the United States brewed 193,157,000 hectoliters. In 1925 the total world production (excluding the United States) was about 139,819,000 hectoliters, of which the United Kingdom, Germany and Austria were responsible for 87,022,000 hectoliters.

Until the late nineteenth century there was localization within the major producing areas as well. Because the acidic content of water is important in brewing, brewers concentrated in areas where the waters contained a large percentage of acid. It became apparent that beer spoiled easily in warm temperatures, so that plants were located largely in cool climates. Moreover as in the case of wines the taste and color of typical beers became associated with certain localities. Today, however, technical innovations have succeeded in placing both water and temperature under chemical and physical control, so that beer can be manufactured anywhere; other factors contributing to the shift in beer production have been the general availability of the raw materials used in brewing and the ease with which the needed technical information can be obtained. The result has been a fairly wide dispersal of beer manufacture in recent times. In the United States after the 1890's new breweries sprang up throughout the south, breaking down the monopoly of the midwestern brewers.

The distribution of the production of distilled liquor is less concentrated. In 1910 the large producers of distilled liquor were the United States, the United Kingdom, Austria, Germany, France and Russia. After the World War, however, Austria and Russia became small producers,

while the production of distilled liquor declined generally in Europe. In 1900 the total world production of distilled liquor was in the neighborhood of 18,075,000 hectoliters; in 1927 total world production, excluding Russia, the United States and Switzerland, was approximately but 7,734,000 hectoliters.

The figures of per capita consumption of the various alcoholic liquors show interesting variations in national tastes. The Italians drink a great deal of wine but consume very little beer or distilled liquor. Germans, on the other hand, favor beer and distilled liquor and drink relatively little wine; the inhabitants of the United Kingdom display the same preferences and prejudices; so did the American preprohibition population. The French drink wine, beer and distilled liquor with almost equal impartiality. As for Swedes, Norwegians and Danes, they drink large quantities of beer, considerable distilled liquor and but little wine. With the exception of wine the trend in liquor consumption showed a material decline between the years 1900 and 1929. It would seem that the world is becoming slightly less alcoholic.

At one time in England wine was red and sweet and beer was dark, heavy and bitter. Standards of quality were set by tasters, who acquired the dignity of a craft and merited the recognition of an official oath. Today there are numerous varieties in all types of alcoholic beverages as well as many ingenuities of production and variants of taste. Hence standards of quality are very uncertain. It is in many instances difficult to define adulteration. Early beers were made generally of water, barley malt, hops and yeast. The brewing technique was crude, so that a considerable body of solid material remained in the final product; the resulting dark and heavy beer was protected by English law against the competition of brewed beverages made by other processes or with different materials. In time, however, substances like sugar and unmalted cereals, which had formerly been looked upon as adulterants, came to be accepted in the manufacturing process. In the late nineteenth century there began an increase in the use of cane sugar, grape sugar, glucose and maltose for a part of the malt; it was found too that the quantity of hops could be diminished. Melted isinglass put in the ferment deposited a large part of the heavy matter and left the beer bright and transparent. Artificial refrigeration shortened the time required for ripening, thus further reducing the cost. Finally, the addition of carbonic acid gas gave the beer an effervescence. The resulting new beer was light in color, low in alcoholic content, clear and sparkling. It rapidly became the national beer in the United States and has recently increased greatly in favor in Europe. To the few who cling tenaciously to the traditional beer, however, it is not genuine but adulterated.

Chemical advances applied to distilled liquors have so far failed to overcome traditional prejudice. A Canadian law requires that whisky remain in bond for a given period of years in order to insure the existence of wood matter in the beverage. Any one of the commonly known whiskies may be made by shaking water, alcohol, certain oils and flavorings together. The synthetic whisky thus produced has the same taste, appearance, smell and organic effect but it does not show a trace of wood; therefore it is still regarded as adulterated and not as an achievement of modern technology. The situation is similar in the case of champagne and the various wine spirits, despite the fact that Americans for the greater part of the last two decades have been drinking chemical blends instead of so-called choice liqueurs. Whether in this case the stigma of adulteration will disappear is uncertain, but on particular forms of adulteration there is general agreement. Beers which contain preservatives like salicylic acid, wines which have ether and liquors made with fusel oil are looked upon as deleterious to health.

The liquor industry in the United States as in the rest of the world is one of relatively small establishments, with the wine making plants lowest in the scale. The American Census of Manufactures of 1914 reported that in 318 wineries none employed more than 500 men and only 6 plants employed 50 workers or more. Of the 434 distilleries only 1 plant employed more than 500 men, while one fourth of the total number employed from 100 to 250 workers. Breweries, on the other hand, constituted larger units. In 1914, 3 breweries employed more than 1000 men; 9 had from 500 to 1000 men; while in all more than two thirds of the brewery workers were employed in plants with more than 50 employees. If the establishments are classified according to the value of the product, it is observed that more than two thirds of the wineries had products valued at less than $20,000 each, while only 3 plants yielded products of more than $1,000,000. Two fifths of the distilleries were enterprises turning out products valued at more than $100,000 each. Of the 1250 brewing establishments 95 produced beverages worth $1,000,-

000 or more, while fully 60 percent of the total manufactured products were valued at $100,000 or over.

With the exception of the manufacture of sparkling wines, the industry is no longer a handicraft one. The extent to which machinery dominates is indicated by the fact that $100,000 of capital in 1914 employed only 8 wage earners, a figure far below the average for the manufacturing establishments of the country. The brewing of beer especially is a mechanically controlled chemical process with the yeast, the air, the water, the temperature, the rate of fermentation, the alcoholic content and the amount of albuminoid material all under direct control. This has been achieved by the utilization of air filters, temperature gauges, chemical agents, yeast cultivation and artificial refrigeration. A further step in the mechanization of beer making was effected by the introduction of automatic bottling machines, which clean, cool, fill, cork and pack the bottles in a continuous process.

Since 1899 liquor companies have grown in size, the only exceptions being the wineries. In the United States there was a decrease from 965 distilleries in 1899 to 434 in 1914. During this period the value of the products more than doubled. The number of establishments producing malt liquors was 1507 in 1899 and 1250 in 1914; over the same period the value of the products increased 87 percent. The turn of the century too produced numerous combinations in the distilled and malt liquor industries in both the United States and Europe. Of the various combinations the German groups were quite successful in establishing a centralized, stable control. Development in the United States was less positive. Here the whisky manufacturers were the first to combine, forming various pools in the 1870's and 1880's, a national monopoly in trust form in 1887 and a giant corporation in 1890. The malting companies united to create a national monopoly in the late 1890's and beer producers soon followed their example with various local combinations. This movement toward monopoly was hastened by greatly expanded production as a result of the new processes and the entry of new enterprises, cutthroat competition, the speculative fever on the stock exchanges and the activities of shrewd promoters. The result was that brewing, malting and distilling companies became involved in a network of speculative finance. But if monopoly was ever obtained, it was short lived. Independent distillers and the small malt houses were able to undercut the prices of the combines and win away their markets. The outcome was less than happy for all but the promoters, some fortunate speculators and those specialists who reorganize corporations. The liquor industry remained one of separately owned enterprises.

The industry was more successful, however, with its trade associations. In the United States there were and in Europe today there are well organized and efficiently conducted trade associations in all branches of the liquor industry. Such groups deal with the general interests of the liquor trade; in the United States the most important activity was the protection of brewers, distillers and vintners against hostile public opinion. In order to try to stem the tide of prohibition sentiment the American associations conducted lobbies in legislative halls, organized clubs, published magazines, subverted the press, gave contributions to political organizations and attempted to boycott the products of those enterprises whose officials were known to have taken a public stand in favor of liquor regulation.

With the recent growth of the industry it was inevitable that the liquor interests should make some efforts to control the sources of retail distribution. There were a number of considerations which prompted the creation of a close union between brewers and wholesalers on the one side and the retail stores (saloons and public houses) on the other. In the first place, the size of the financial stake which the brewers in particular had in their industry called for the maintenance of a permanent retail outlet for their wares. Second, the drinking habits of the American and British populations, which had grown accustomed to drinking their beer and hard liquor in public places, demanded the establishment of a great number of conveniently located saloons. Third, the saloon keepers were usually men of small means and incapable of financing themselves. Fourth, the mounting license fees compelled saloon keepers to seek the patronage and assistance of the brewers and wholesalers. The result was the building up of a system under which the retail distributors were nominally the owners of their saloons but in which actually they acted as the agents of the larger units in the industry. In Great Britain this relationship came to be called the "tied house" system; under it, as a rule, the brewer or wholesaler advanced the saloon keeper's license fees and in exchange took a chattel mortgage on the saloon furniture and fixtures. In effect this procedure acted as a complete check on the saloon keeper, for his refusal

to handle his patron's wares or his inability to manage his house brought about the termination of the financial support accorded him.

To a very real extent both brewers and saloon keepers found the system advantageous. The brewer possessed what amounted to a proprietorship control without the attendant responsibility, and the saloon keeper was enabled to borrow a considerable part of his working capital. It has been impossible to determine, however, whether the system was ultimately of real benefit to the brewers, for on the debit side there always stood the fact that many of them had millions of dollars invested in doubtful securities. It is true that some brewers seriously questioned the whole structure of the brewery-saloon relationship and advocated its abandonment and the substitution for the prevailing method of the sale of bottled beer through grocery stores and specialty shops; but it was generally appreciated that there were insuperable obstacles in the way of such radical reorganization. Such a change would have meant not only the development of a new system of distribution but also a recasting of the drinking habits of most consumers of alcoholic beverages.

In the United States the ratification of the Eighteenth Amendment and the passage of the National Prohibition Act precipitated a crisis for which the liquor industry was little prepared. Too many of its members had lulled themselves into a false sense of security with the belief that nation wide prohibition could never become an actuality. When the blow fell in 1920, however, liquor manufacturers and dealers were compelled to choose from among a group of equally undesirable courses. They could shut down their plants in the hope of repeal or modification. They could continue to operate as illicit breweries or distilleries. They could convert their plants to other uses. They could sell their establishments to other industrial enterprises. Or, finally, they could merely salvage their machinery and other equipment. Whichever course was chosen, the entrepreneur was certain to lose heavily.

No records are available to indicate statistically how the liquor industry adjusted itself to this trying problem. The distilleries had the greatest difficulties to face, for only 25 out of the 880 such plants recorded in the 1914 tabulation of the United States Bureau of Internal Revenue had been distilling alcohol from molasses and therefore conversion into factories for the manufacture of industrial alcohol was possible only in a very few cases. Most of the distilleries in fact either shut down or dismantled their plants completely. The breweries were a little more advantageously situated, as is evidenced by the fact that, by 1921, 667 former breweries were producing some form of non-alcoholic beverage. A number converted their plants into establishments for the manufacture of candy, cheese, syrups, cider, ice cream, vegetable oils, egg powder and condensed milk. But while there occurred instances of profitable adaptation to the requirements of prohibition, the liquor industry suffered a great financial loss, for by and large there was not a sufficient increase of consumption to absorb the additional output of the converted breweries. Nor did the American public take quickly to the so-called cereal beverages or near beer which breweries were permitted to produce.

Despite the banning by the National Prohibition Act of all alcoholic beverages except medicinal liquors and sacramental wines the American public was not to go without its alcoholic drink. The technique of bootlegging was not unfamiliar to Americans, for long before prohibition high prices in the dry territories and high licenses in the wet had made the illicit traffic commercially advantageous. This had usually taken the forms of the diversion of industrial alcohol, fictitious labeling, the refilling of original bottles, the dilution of whisky with water and alcohol and the production of synthetic drink out of flavorings, alcohol, coloring and water. It is true that during the first two years of prohibition the American liquor industry struggled against great odds and that moonshining, smuggling and seizure by stealth and violence succeeded in providing only a small commercial supply. The total amount of alcoholic beverages produced in 1921, the first year of the prohibition experiment, as estimated by Clark Warburton, was 33,000,000 gallons of spirits, 54,000,000 gallons of wine and 136,000,000 gallons of beer. The industry had begun to adjust itself by 1923, when the total estimated production reached 219,000,000 gallons of spirits, 86,000,000 gallons of wine and 250,000,000 gallons of beer. Since that year its growth was steady until it reached 124,000,000 gallons of wine in 1929 and 225,000,000 gallons of spirits and 864,000,000 gallons of beer in 1929. A comparison with production for the fiscal year 1916–17 plainly shows that except in the case of beer the amount of liquor manufactured for the American drinking public exceeded the preprohibition supply. The 1917 output was 42,723,000 gallons

of wine, 167,740,000 gallons of spirits and 1,885,071,000 gallons of beer.

Ten years after the inauguration of the prohibition era the illicit liquor industry was probably as well organized as any in the American industrial scheme. The violence and the numerous killings attending it merely grew out of the necessary absence of a recognized institutional procedure for the adjudication of disputes; but violence as such did not impede the steady flow of beer and hard liquor from producer to consumer. The size of the establishments was small but plants were numerous, as is indicated from the fact that confiscations by federal officers in a year usually amounted to more than the total of breweries and distilleries in existence before prohibition. Illicit manufacturers were able to operate with impunity great fleets of trucks, sending them over the main highways for long distances. Indeed many of the breweries were large enough to make use of the most improved technical processes, and it was claimed for some that they had reduced the cost of brewing by a sizable margin. Although originally the illicit liquor traffic had been financed with reinvested profits and the revenues of various collateral unlawful enterprises, like prostitution, commercial extortion and gambling, later capital funds attracted by the evident success and stability of the industry were derived from legitimate financial channels. It appeared that the financing of a well established operator, particularly in the beer trade, presented no real difficulties. Nor did the outlawed saloon long stand in need of a substitute. In the place of the corner saloon there sprang up a group of institutions as numerous and as conveniently located as the old retail outlets—the speakeasies, road houses, night clubs, blind pigs and beer flats of the prohibition era—which like the old saloon were assured of economic stability because in many instances they had the physical protection and financial support of the brewers and wholesalers.

It is true that there existed considerable variance in the organization of the many phases of the industry. In Chicago, for example, the production, distribution and retail sale of beer and auxiliary commodities have been under a single control, making for a rather large and complicated undertaking and therefore requiring exceptional recourse to violence. In New York City, on the other hand, the brewing of beer, its wholesale distribution and its retail sale are separately handled. There is of course an understanding between the brewers over the division of the market, and similar agreements probably exist among the wholesalers. In the import trade on the eastern coast there is a high degree of organization. Large ships owned, it is claimed, by international syndicates bring liquor to the twelve-mile line; here it is assigned to a smuggling group operating independently and is taken by them into ports of call; finally another group takes over the supply and sells it to wholesalers for retail distribution. A fair amount of cooperation apparently exists among the various parties.

The quality of prohibition liquor probably compares not unfavorably with much of the pre-prohibition supply. The larger breweries employ modern mechanical and chemical devices, although it is not unlikely that they may hasten the period of maturing in order to increase turnover; the final product may therefore turn out to be a somewhat "rank" beer. Distilled liquors are almost wholly synthetic blends, but there is sometimes sold in the cheaper speakeasies a deleterious whisky made either of incompletely denatured alcohol, unconverted wood alcohol or alcohol in which the distillation has been inexpertly performed.

There are various types of business organization to be found in the illegal liquor traffic. Most wine and considerable beer are made at home. As for the commercial undertakings, there are companies which hold government permits to operate denaturing plants, perfume factories, patent medicine laboratories or cereal beverage works but, using their permits as a screen, actually manufacture potable alcohol. Again, there are entirely legal organizations producing non-fermented, concentrated grape juice or wort which with relatively little trouble on the part of the domestic user can be converted into wine or beer. In a third group may be placed the restaurants and clubs which sell food as an adjunct to their retail liquor business. Finally, one finds a great number of frankly illegal breweries, distilleries and saloons which operate by virtue of friendly and pecuniary intercourse with the law enforcement authorities.

The essential elements of this wide flung illegal activity are the gang and its leader. Certain numbers in each such group, possessing business and administrative capacities, constitute the executive personnel and are in charge of technical operations. Others combine the functions of the police and the military and furnish protection for the leader and the liquor ring's trucks and act as trade agents, in this capacity establishing new contacts, extending the market and

eliminating competition. The usual methods are violence and intimidation; these are often flagrantly employed, and legal apprehension and punishment of the culprits are rare.

The gang leader in place of the socially recognized ownership of ordinary business operations maintains a kind of suzerainty over his properties and personnel. Transfer of suzerain rights and their sharing and extension are brought about not by the usual commercial practises of purchase and sale but by force of arms. Nevertheless, alliances and agreements are often established by consent and are sometimes put into writing; the breaking of contracts is seriously regarded and the penalty in such cases is usually death. The functions of the gang leader are those of the higher management of big business. He formulates general policies, negotiates with gang chieftains in other localities and handles public relations matters. This last is probably his most important activity, for the security of his authority and his pecuniary success depend upon his ability to conduct his enterprise without too much molestation and to obtain the needed "protection" from political leaders and the police. Protection is attained by a variety of methods: outright payments of money are made; personal favors to politicians, such as loans of money and privileged participation in trade profits, are awarded; and control over powerful political organizations, such as district clubs and local trade unions, is sought and obtained. A successful gang leader draws upon a variety of aptitudes—indeed they are not very dissimilar from those which go to make up the socially recognized captain of industry: pecuniary shrewdness, executive force, insensitivity to the conventional tabus regarding violence and a capacity for diplomatic manoeuvring.

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See: ALCOHOL; LIQUOR TRAFFIC; PROHIBITION; RACKETEERING; GANGS; EXCISE; FOOD INDUSTRIES, section on BEVERAGE INDUSTRY.

Consult: *Standard Encyclopedia of the Alcohol Problem*, ed. by E. H. Cherrington and others, 6 vols. (Westerville, Ohio 1925–30); Ritter, Kurt, *Weinproduktion und Weinhandel der Welt vor und nach dem Kriege*, Agrarpolitische Aufsätze und Vorträge, vol. xii (Berlin 1928); Simon, A. L., *Wine and the Wine Trade* (London 1921), and *The Supply, Care and Sale of Wine* (London 1923); Arnold, J. P., *Origin and History of Beer and Brewing* (Chicago 1911); Dorchester, Daniel, *The Liquor Problem in All Ages* (New York 1884) pt. i; Moehlman, C. H., *When All Drank and Thereafter* (New York 1930); Gordon, E. B., *When the Brewer Had the Stranglehold* (New York 1930); Butler, F. H., *Wine and the Wine Lands of the World* (London 1926); Mansfeld, Robert, *Kapitalkonzentration im Brauereigewerbe*, Versuchs- und Lehranstalt für Brauerei in Berlin, Veröffentlichungen der wirtschaftlichen Abteilung, pt. viii (Berlin 1913); Hugon, Roger, *L'évolution économique de la brasserie française* (Nancy 1926); Koller, Arnold, *La production et la consommation des boissons alcooliques dans les différents pays* (Lausanne 1925); United States, Bureau of Chemistry, "Foreign Trade Practises in the Manufacture and Exportation of Alcoholic Beverages and Canned Goods" by H. W. Wiley, *Bulletin*, no. 102 (1906); Macdonald, Aeneas, *Whisky* (Edinburgh 1930); Feigl, Leo, *Handbuch für Likör- und Spirituosenerzeuger*, Hartlebens Chemisch-technische Bibliothek, vol. ccclxxxv (Vienna 1926); Ehret, George, *Twenty-five Years of Brewing* (New York 1891); Feldman, Herman, *Prohibition; Its Economic and Industrial Aspects* (New York 1927); Schlüter, Hermann, *The Brewing Industry and the Brewery Workers' Movement in America* (Cincinnati 1910); United States, National Commission on Law Observance and Enforcement, *Report on the Enforcement of the Prohibition Laws of the United States*, United States, Congress, House, 71st Cong., 3rd sess., House Document, no. 722 (1931); Warburton, Clark, *The Economic Effects of Prohibition*, Columbia University, Studies in History, Economics and Public Law, no. 379 (New York 1932).

LIQUOR TRAFFIC. Evidences of the international liquor traffic are to be found in the early histories of Egypt and Babylonia. In Greece wine soon became an important article of commerce and as early as 800 B.C. its export formed a part of the foreign trade of a number of the Greek cities. The Greek wine merchants sent their wares to such distant points as the Euxine, Scythia, Lydia, Iberia, central Asia and even to what are now the Kiev region, Silesia and Brandenburg. Under the Roman Empire the wine trade flourished: Italian wines were exported to almost all parts of the empire and the native wines of Egypt, the Euxine, Greece, north Africa, Spain and southern France were imported. Even with the decline of trade under the late empire the wine traffic did not cease entirely, for from the fifth to the eighth century Italian wines reached Russia by way of the Dnieper and the Volga rivers; also during the eighth and ninth centuries the wine and beer of Mediterranean cities were exported into northern and western Europe.

With the reversion to a local economy in the Middle Ages the liquor traffic for a time almost entirely disappeared. But by the thirteenth and fourteenth centuries shops for the sale of wine and beer were already in existence in the larger European cities, and the trade in these commodities had become so important that in Germany and England it was subjected to restrictive legislation. The growth of national states in the

fifteenth and sixteenth centuries was accompanied by a great expansion of the traffic. Wines from Spain and France, gin from Holland, beer from the German cities and ale, beer and whisky from England were important articles of commerce; naturally strong efforts were made either to identify the liquor traffic with national interest or to utilize it to strengthen other economic groups. By the Methuen Treaty between England and Portugal in 1703, for example, which was motivated by the representation of English cloth merchants that Portugal was likely to be a better market for their wares than France, Portuguese wines were admitted into English ports at a duty of £7 a tun, while French wines were compelled to pay £55 a tun; as a result the English, who had been large consumers of claret, now became drinkers of port.

The nineteenth century saw a relaxation of mercantilistic restrictions over the liquor traffic. As a result of Gladstone's great reduction of duties on wine in 1860 English consumption of continental varieties increased. About the middle of the century beer and *Branntwein* were among the leading export commodities of Germany. New markets for trade spirits were developed in the backward regions of the earth but with such devastating effect on the natives that international agreements were necessary to curtail such traffic, particularly in Africa. Toward the end of the century the consumption of alcoholic beverages greatly increased and it was not until the period following the World War that there set in a general decline, especially in the drinking of spirits.

In recent times, as the market for liquor has contracted, drink manufacturers have found themselves hard pressed to develop new outlets for their wares and liquor interests have therefore again sought the aid and protection of their governments. One of their most successful devices has been the invocation of the spirit of nationalism. The British are exhorted to drink empire rather than continental wines; in France Alsatian beer is favored at the expense of German; the Germans in turn are asked to drink their own *Sekt* instead of French champagnes; Argentineans are learning to prefer the products of their own vineyards to the once popular European wines. Nevertheless, liquor still plays an important role in the foreign trade of many European countries, particularly France, Spain and Portugal. France, the greatest wine producing country in the world, imports more wine than it exports; part of the imported wine is for French consumption and part is blended with the finer French burgundies, clarets and the rest for export to northern European countries and Great Britain. Spanish exports of wine are large and the liquor interests have been very influential in shaping the government's foreign commercial policy. In Portugal wine making is the chief industry and accounts usually for a major share of the country's annual exports.

As a result of pressure brought to bear by the French, Spanish and Portuguese governments Iceland and Norway have been compelled to modify drastically their liquor laws. In 1921 Spain threatened a virtual embargo on Iceland's salted codfish unless the Icelandic prohibition against foreign wines was removed; the next year Iceland bowed before the demand and consented to admit Spanish wines with an alcoholic content up to 21 percent. Norway met with almost insuperable obstacles in her efforts to put into effect a national prohibition law, beginning with 1921, because of the existence of commercial treaties with France, Spain and Portugal under which Norwegian fish was to receive preferential treatment in return for similar rights accorded French, Spanish and Portuguese wines. In 1921 Norway gave way before French pressure and signed a new convention admitting French wines of less than 14 percent alcoholic content, under preferential rates, and a yearly shipment of 400,000 liters of wines and spirits of more than 14 percent alcoholic content to be used for medical, scientific and technical purposes. After prolonged negotiations similar concessions were made to Spain and Portugal, the former being allowed to ship annually 150,000 liters of heavy wine (more than 14 percent alcoholic content) and the latter 850,000 liters. In 1923 the section of the Norwegian prohibition law relating to the importation of heavy wine was repealed altogether.

Liquor smuggling on a large scale has been another problem that has arisen in recent times to vex governments seeking to maintain a rigorous policy of liquor control. The United States and the Scandinavian and Baltic countries have been notable sufferers in this respect. The extensive frontiers of the United States make it difficult to check smuggling; and while the precise amount of liquor goods illegally imported cannot of course be ascertained, the traffic must be large. It is true that the United States has gained the cooperation of a number of liquor exporting and mercantile nations, which have agreed to recognize American jurisdiction over

the liquor traffic on its bordering seas to a twelve-mile limit instead of the traditional three; also the increased and improved personnel of the American Coast Guard Service has made the landing of liquor less easy than formerly. But the National Commission on Law Observance and Enforcement (Wickersham Commission) has justly pointed out that the United States is particularly vulnerable because of her contiguity to Canada, despite Canada's law of 1930 which prohibits the declaration of withdrawals of liquor for direct exportation to her southern neighbor. Smugglers have merely shifted their bases of operations from Canadian lake and river ports to the islands of St. Pierre and Miquelon, the Bahamas, the West Indies, Mexico and Central America, all of which serve as depots for the running of Canadian whiskies into the United States. The commission's report says (*Report on the Enforcement of the Prohibition Laws of the U. S.*, p. 24–25): "In three years ending in 1929, while the reexports of whisky, all of which but a negligible few gallons had gone to the United States, had multiplied by between four and five, the amounts of Canadian whisky declared for export to the United States had remained stationary. One must, however, note the amounts declared for export to places where there was no substantial market except for smuggling into the United States. In five years ending in 1929 the declared exports of whisky from Canada to the British West Indies more than doubled, from Canada to St. Pierre and Miquelon multiplied almost by four, and to British Honduras multiplied by more than three. . . . It would be a mistake to assume that the cutting off of clearances of liquor from Canada to the United States has achieved its helpful intention. Continual increase in Canadian production, with no corresponding increase of Canadian home consumption, indicates the contrary."

In the Scandinavian and Baltic countries the smuggling of liquor presents perhaps even greater difficulties. Sweden can be reached easily by rum runners from Germany; and Denmark until 1928, when the privilege of free importation of spirits and wine was denied to all but a group of licensed firms, was at the mercy of the illicit traffic because of the fact that Copenhagen had long been a free port. A memorandum on smuggling submitted to the Finnish government in January, 1923, by the Finnish Prohibition League concentrated attention on the existing evil in the whole north European area with the result that Norway took the initiative in inviting the cooperation of Sweden, Finland, Denmark and Germany for the creation of a common program. A conference at Oslo, held in June, 1923, was followed by a conference at Helsingfors two years later. This led to the signing of a multilateral convention in August, 1925, by Finland, Norway, Sweden, Denmark, Germany, Poland, Lithuania, Estonia, Latvia, Russia and the Free City of Danzig which sought to surround the international liquor traffic with serious restrictions. All spirits of more than 18 percent alcoholic content (in the case of Germany and of Russia the maximum was put at 22 percent) could not be exported to the signatory powers in vessels of less than one hundred tons; exports in vessels of more than one hundred tons and less than five hundred tons were to be permitted only when authorized by officials of the country of origin; every ship's master was to be required to keep a record of all shipments and present written declarations vouching for the legality of his wares; a twelve-mile limit was agreed upon for purposes of search and seizure. But smugglers found little difficulty in evading these limitations on their activities by the simple device of registering their vessels under the flags of nations not party to the Helsingfors convention.

In September, 1926, Finland, Sweden and Poland united in a request to the League of Nations for an investigation of the liquor traffic, particularly smuggling. Denmark, Belgium and Czechoslovakia soon joined the petitioning nations; the result was the reference of the subject to the Committee on Technical Organization in September, 1927, and the adoption of a plan a year later for a study of the illicit liquor traffic and the abuses growing out of alcohol consumption. Wine and beer were not to be included in the inquiry. By 1932 no definite recommendations for an international program had yet been made.

While matters arising out of the international liquor traffic have thus claimed the attention of many modern states in recent years, the problem of governmental sumptuary control over the local liquor traffic has been even more vexing and insistent; in fact in the period following the World War it has assumed the place of a major public question in almost every civilized nation in the world. Governments have instituted many devices to make possible sumptuary control, short of outright prohibition; and they have met with varied success. The most frequently occurring forms of control have been: high taxation, especially discriminatory, in the case of strong

drink; high license and the limitation of the number of retail outlets (saloons or public houses); the establishment of quasi-public or limited dividend corporations for either the manufacture or the retail sale of spirituous drink or both; the creation of direct governmental agencies or government monopolies for the manufacture, importation, distribution and sale of liquor.

The employment of excise duties on liquor for the purpose of raising revenues has long been familiar in public finance policy; a tax on drink figured prominently in Alexander Hamilton's first fiscal program for the United States. Up to 1860 the American government imposed excise taxes on various forms of intoxicating liquors. During the Civil War rates were increased, and for the last two years of the struggle the average annual return accounted for 16.6 percent of the Union government's internal revenue receipts; from 1866 to 1915 the practise was continued, so that the average annual proportion of total internal revenues derived from the malt and liquor taxes ranged from 50 to 78 percent. War and post-war governments particularly have resorted to the liquor excise for revenue raising purposes. In France before the World War the excise on wine was 1.5 francs per hectoliter; by 1919 the rate had been increased to 19 francs and after being lowered somewhat during the following two years was increased in 1922 to 25 francs. By 1920 the French excise on spirits stood at 1000 francs per hectoliter. The excise on beer is 2 francs per hectoliter for each degree of alcohol. In the United Kingdom in 1913–14 the excise duty on spirits was 14/6 per proof gallon and on beer 7/9 per standard barrel; during and after the war the rates were raised so that since 1920 the spirits tax has been 72/6 per proof gallon and the beer tax 100/- per standard barrel. In 1930 the beer tax was fixed at 103/- with a rebate of 20/- under certain conditions. At the beginning of the twentieth century the United Kingdom was deriving 41.8 percent of total ordinary revenues from the liquor excise; in 1930 the proportion from the same source was 19.1 percent. It is important to note that the great increase in the English liquor excises during the post-war period was as much a conscious effort at sumptuary control as a revenue raising device, although English lawmakers also favored the principle of high license with accompanying limitation on the number of public houses.

In Denmark the government relied chiefly on the excise to bring the liquor traffic under public control. In March, 1917, hard pressed by a decline in its foreign trade and forced to tap new revenue sources, it placed a so-called extraordinary tax on all existing stocks of spirits, the rate being made equal to the retail price at the time. During the war period the excise was raised until it stood at 20 kroner ($5.36) per liter of spirits and 18 kroner ($4.82) per 100 liters of beer. In 1922, determined to exercise a permanent hold on the industry in the interests of reduced consumption of strong drink, Denmark fixed the excise on spirits at 15 kroner per liter (changed in 1930 to 17 kroner) and levied direct taxes on the sales of liquor manufacturers, importers and retailers as well as on the liquor sold in restaurants, hotels and public houses. To further the governmental purpose of sumptuary control in 1923 Denmark licensed a single company to manufacture all the spirits for the country; the terms of the agreement called for a limitation of profits to 9 percent on the capital stock. The result has been a marked decline in consumption of spirits, the per capita consumption dropping from 2.18 proof gallons (United States standard) in 1913 to 0.32 proof gallons in 1929.

The licensing of the retail dispensers of liquor, i.e. the saloon keepers, was resorted to particularly in the United States and the United Kingdom. In the former the method met with only indifferent success; in the latter it has proved efficacious. Before the inauguration of national prohibition every state in the American union with the exception of Kansas and North Dakota experimented at one time or another with the licensing system. High license with only a slight attempt to supervise the saloons themselves was employed in great commonwealths like Pennsylvania, New York and Massachusetts; the usual restrictive measures called for a limitation of the number of local saloons on the basis of population, the posting of a heavy bond by proprietors, Sunday and election day closing and the prohibition of alcohol sales to minors and intoxicated persons. Low license was employed in other states and was accompanied as a rule by a more elaborate code for the regulation of the dispensing agencies. The character of the licensing authorities varied widely: in Massachusetts, except for Boston, the license commissioners were named by the mayor and aldermen of the cities and the selectmen of the towns; in Boston licensing matters were handled by the board of police commissioners appointed by the governor; in New York after the enactment of

the Raines Law of 1896 the licensing agency was a state excise commission; in Pennsylvania licenses were granted by the judges of the courts of Quarter Sessions. Despite this general preoccupation with the problem it is to be noted that the many licensing systems, whether they placed their chief reliance on high license or on elaborate regulatory codes, did not succeed in checking the growth of the saloon. Distillers and brewers found it to their interest either to subsidize saloon helpers or to advance in the form of loans the necessary sums for the payment of heavy license fees; where elected officials were in charge of the issuance of licenses, it was inevitable that the liquor industry should seek to control the local political machine or by heavy campaign contributions make it more amenable to reason.

In Great Britain, on the other hand, the licensing system, accompanied by a definite policy looking toward the reduction of the number of public houses and the restriction of hours of sale, has proved markedly successful. Thus the per capita consumption of spirits has dropped from 0.96 proof gallons (United States standard) in 1913 to 0.38 proof gallons in 1929, while the per capita consumption of beer has dropped from 33.3 gallons (United States standard) in 1913 to 19.7 gallons in 1929. The English have experimented with this mode of control for centuries; and out of a long series of codes, beginning with the licensing acts of the Tudors, there was finally evolved the act of 1904 and the Licensing Consolidation Act of 1910. The basic principle of English liquor legislation was thus put by the Earl of Balfour in 1904: "You will never get rid of the public house from this country. . . . What then should you aim at? Surely at this ideal, that the public house should be kept respectably, should be kept by respectable persons, and should be kept in such a manner as will make those who frequent it obey the law and conform to the dictates of morality" (quoted by Catlin, G. E. G., *Liquor Control*, p. 150–51).

The English scheme therefore provides for the granting of licenses by local justices of the peace, who are appointed for life by the lord chancellor; a strict supervision over the physical conditions of the licensed premises and a close examination into the financial and moral responsibility of the publicans; extinguishment of licenses in those areas where public houses seem in excess of the needs of the community; and state experiments, through the erection and operation of model public houses and even the direct ownership of breweries, in an effort to determine how those characteristics of public drinking which are deemed socially desirable can best be conserved. The official regulations concerning conditions of sale and hours of opening of the public houses are explicit. Thus children under fourteen years may not be served at the bars; the sale of liquor to persons under eighteen years for on-premise consumption is prohibited; no sales on credit, except for off-premise consumption, are allowed; gambling in public houses is illegal. In London the hours of sale are limited to nine, between 11 a.m. and 11 p.m., with a break of at least two hours in the early afternoon, while on Sundays and certain designated holidays they are restricted to five. Outside London the hours of sale are limited to eight, between 11 a.m. and 10 p.m., with a break of two hours in the early afternoon; Sunday and holiday hours are similar to those in London.

Licenses are usually granted for a year, but the period may be extended to a maximum of seven years; after that time applications for renewal are treated as new licenses. A license originating before 1904 may not be revoked (except for cause) unless the owner is compensated out of a fund built up from a direct levy on all licensed places. That the program of eliminating unnecessary public houses has been pushed vigorously may be seen from the fact that in England and Wales alone, from 1905 to 1929, $96,000,000 has been paid out of the compensation fund; also the ratio of public houses to population has dropped from 33.94 on-licenses per 10,000 of population in 1895 to 19.77 on-licenses per 10,000 of population in 1929. While the decrease in the number of licensed houses has been accompanied by an increase (from 6589 in 1905 to 13,526 in 1931) in that of registered clubs, many of which are organized solely for the purpose of supplying liquor to their members at all times, there has been a decided falling off in the total number of on-license places.

Australia and New Zealand have handled the liquor traffic in much the same way, that is to say, through high license and a reduction of on-license places; in the states of South Australia and Western Australia the extinguishment of liquor permits may be effected by local option. In 1923 France limited the number of places selling intoxicating beverages to that then in existence; no attempt has been made, however, to reduce the number of establishments already possessing licenses.

In Sweden the liquor traffic has been brought

under control through the creation of limited dividend corporations for the manufacture and sale of drink, the virtual rationing of the population and the prohibition of on-premise consumption except in eating places. Since 1865, when the so-called Gothenburg system was introduced, the Swedes have been experimenting with the possibility of checking the spread of the drink evil by eliminating the economic incentive in the liquor traffic. But the Gothenburg plan, operating through limited dividend corporations having local monopolies for the retail sale of brandy, was only partially successful because it did not cope with the manufacture and importation of spirituous drink and the sale of beer, wine and wine spirits.

Largely as a result of the activities of Dr. Ivan Bratt, who began in 1913 to build up a monopoly, in the public interest, of the distillation and wholesale distribution of strong drink, Sweden in 1919 radically modified the Gothenburg system and moved to eliminate private profit from every branch of the liquor industry. The Wine and Spirits Central, a limited dividend corporation financed by private capital but with its profits restricted to 7 percent annually, was invested with a national monopoly over the manufacture, importation and wholesale distribution of all spirits; some 122 independent private corporations, also of a limited dividend character and with their annual return restricted to 5 percent, were created to handle retail distribution; the state was to receive the surplus profits of the Central and the local distributing agencies.

There are two additional elements in the Swedish system of control. Spirits are sold by the bottle for off-premise consumption only; in licensed restaurants and hotels the quantity which may be sold each customer with his meal is limited. Also liquor sales to individuals for off-premise consumption are closely regulated: only possessors of pass books may purchase at the system stores. The applicant for a pass book is required to state his age, occupation and income and the size of his family and to provide convincing proof of his sobriety; if he is married and over twenty-five years of age he may purchase four liters every month. Bachelors, women and persons of small income are allowed from as much as three liters a month to as little as four liters during the course of the year. Wine and beer are sold freely, but the alcoholic content of the latter is limited to 3.2 percent by weight. Pass books are liable to cancellation if the holder is reported by the police to be a habitual drunkard, if he has resold purchased liquor or if he has made excessively large wine purchases. As a result of this close surveillance of the nation's drinking habits the per capita consumption of spirits has declined from 1.82 proof gallons (United States standard) in 1913 to 1.24 proof gallons in 1929. Norway, after experimenting with the Gothenburg system for more than forty years and with a modified form of prohibition from 1921 to 1927, has sought to control the liquor traffic by means not unlike those adopted by Sweden; that is to say, through a national limited dividend company which has the monopoly over the manufacture, importation and wholesale distribution of spirits and a system of retail outlets, whose profits also are definitely fixed.

In Canada governmental control over the liquor traffic assumes still another form, that of monopoly over retail sales. After passing through the cycle of local option, provincial prohibition and dominion prohibition (the latter two methods were tried during the war period) the Canadian provinces have sought to cope with the problem by taking into their own hands the retail distribution of spirits. Quebec was the first to adopt the new system, in 1921; British Columbia joined in the same year, Manitoba in 1923, Alberta in 1924, Saskatchewan in 1925, Ontario and New Brunswick in 1927 and Nova Scotia in 1929; prohibition continues to exist only in Prince Edward Island and the Northwest Territories. While the form of control differs from province to province, the following characteristics are common to all of them: the manufacture of whisky, beer and wine is privately owned, but distillers, brewers and vintners are strictly supervised by provincial commissions; the retail distribution of spirits is a provincial monopoly, with provincial control boards in every case empowered to buy, sell and manage property, grant and revoke permits, hire and discharge employees and create policies; the on-premise consumption of spirits is nowhere permitted, all sales being by sealed package only. Within this frame there are of course wide variations, particularly as regards the sale of beer and wine. Beer may be bought by the bottle at government stores in all the provinces; from beer stores operated by brewers in all the provinces except Saskatchewan, New Brunswick and British Columbia; and by the glass in licensed taverns or beer parlors in Alberta, British Columbia, Manitoba and Quebec. Except in the cases of Ontario and Quebec wine can be acquired only

in the government stores and for off-premise consumption. Except in Manitoba and Saskatchewan there is no limit to the quantity of wine which may be sold a customer. Five of the provinces—Alberta, British Columbia, Manitoba, Ontario and Nova Scotia—approximate the Swedish system by requiring individual permits for the purchase of spirits; like Sweden all the provinces empower their liquor control boards to deny the purchase of liquor to habitual drunkards. The per capita consumption of spirits in Canada has decreased from 1.36 proof gallons (United States standard) in 1913 to 0.55 proof gallons in 1929.

Government monopoly for purposes of liquor control has not been unfamiliar to American history. The so-called dispensary system on local lines, under which municipal authorities had the exclusive right to dispense spirits, first made its appearance in Athens, Georgia, in 1890; and during the next twenty-five years similar agencies were functioning in a number of towns and counties in Georgia, Alabama, North Carolina, South Carolina and Virginia. In 1893 South Carolina undertook the establishment of a state wide dispensary scheme by which the state itself had a complete monopoly of the sale of alcoholic drinks. The system was operated by a board of control made up of the governor and two other persons, who purchased the liquor for the state and appointed local boards for the separate counties. The private manufacture of liquor in South Carolina was outlawed; the liquor to be dispensed was acquired in bulk, bottled and packaged and distributed among the county and city agencies for retail sale and off-premise consumption; the retail agencies on their part were strictly supervised as to hours of closing, the registration of purchasers and denial of sale to intemperate persons. Half the profits from the retail sale of spirits was to go to the county and half to the municipality. The profits from the state handling of the liquor were to be turned over to the South Carolina treasury to be used for educational purposes. In the fourteen years during which the state dispensary system was in existence the average annual return to the state was $465,000. In 1907 decentralized county agencies were substituted for the state dispensary; in 1915 the county dispensaries were abolished and state wide prohibition was inaugurated.

A number of factors brought about the abandonment of the dispensary system in South Carolina. In the first place, it was used as a football of politics: its offices were regularly employed to strengthen the personal machine of the governor. Secondly, the purchase of liquor at wholesale from private distillers made corruption inevitable: gratuities and rebates were accepted by dispensary officials. Finally, the high price of government liquor and the restricted hours of sale led to the appearance of a flourishing illicit liquor traffic made up of the usual bootlegging and moonshining and the operation of blind tigers and clubs.

State monopolies exist in Switzerland, Germany, Poland and Russia, although only in the case of the first named is the control of the liquor traffic the chief reason for the establishment of the monopoly. The Swiss began experimenting with a federal monopoly in 1874 and in the following period the manufacture of alcohol and liquors from potatoes, molasses, sugar and grain became an exclusive state concern; but the great growth in home distillation compelled a complete overhauling of the system in 1932. Under the new dispensation private distillers are first to be licensed and then gradually bought out; home distillation is to be taxed; the monopoly's control is extended over the manufacture, transit and sale of liquors distilled from fruit spirits; and wholesale handling is to be largely the concern of the state monopoly with legally fixed minimum and maximum prices, which may be paid the distillers. The cantons are given wide powers in handling retail sales: they may prohibit the sale of liquor for on-premise consumption; they may restrict hours of sale; they may tax hotels, restaurants and shops handling spirits. Interstate retail liquor sales, however, are placed under federal control.

Germany in 1922 created a federal monopoly over the importation, manufacture, exportation and sale of spirits. Private importation is permitted but is subject to very high taxation; all domestic manufacturing is on the basis of permits, which are used as tax devices. In 1924 Poland established a state alcohol monopoly vested with the right to buy and sell alcoholic beverages and to manufacture pure spirits. But production, as in Germany, remains a private enterprise, the distillers being taxed through licenses. Russia as early as 1894 sought to restrict the heavy drinking of vodka and at the same time to use the liquor traffic for fiscal purposes, when the retail handling of the beverage was made a government monopoly and government shops were set up for off-premise sales only. Private establishments might operate, but

they were in effect government commission houses and their numbers were limited. Distillation was in the hands of private manufacturers; rectification was performed at government plants. In 1913 one fourth of the annual state revenue came from the liquor traffic. During the World War the sale of vodka was entirely prohibited, and for a time the Soviet government made an effort to continue prohibition. But wholesale bootlegging and the appearance of a substitute vodka called samogon forced the gradual abandonment of prohibition and the establishment of a complete state monopoly in 1925. Since that time there has been an increase in the amount of vodka manufactured (although present production is well under pre-war figures) and an appreciable decline in the consumption of samogon. The significance of the part played in Soviet financing by the receipts of the vodka monopoly may be seen from the fact that revenues from this source grew from 587,000,000 rubles in 1926–27 to 1,542,000,000 rubles (13.3 percent of the total budget) in 1929–30.

D. W. McConnell

See: Prohibition; Liquor Industry; Alcohol; Temperance Movements; Anti-Saloon League; Sumptuary Legislation; Licensing; Excise; Smuggling; Racketeering; Gangs; Monopolies, Public; Concurrent Powers; Interstate Commerce.

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LIST, FRIEDRICH (1789–1846), German economist. The son of a prosperous tanner of the free town of Reutlingen, List early absorbed the doctrines of the Enlightenment and of classical economics, finding in them an excellent weapon for combating the rule of an arbitrary bureaucracy and the restrictions of the lingering guild age. Under Wangenheim's ministry he found it possible to give full scope to his liberal political ideas as adviser to the Württemberg government, as professor in the faculty of economics founded at his suggestion at the University of Tübingen and as editor of several publications. With the rising tide of the German reaction, however, his activity soon came under suspicion. What above all caused most German governments to look upon him as a demagogue was his establishment in 1819 of an association of merchants and industrialists, the so-called *Handels- und Gewerbsverein*, as well as his advocacy of the abolition of internal customs barriers. When in 1820 he was elected to the legislature and on behalf of his native town petitioned the authorities for an extension of local self-government and for publicity in judicial procedure, he was sentenced to ten months' imprisonment for attempting to undermine the stability of public institutions. List fled abroad and led a wandering life for several years. In 1824 he returned to his native country, where he was promptly arrested; released upon a promise to emigrate to America, he sailed in 1825 for New York.

In the United States List engaged in various activities; he was a farmer, an editor of a German newspaper at Reading, Pennsylvania, a successful mine and railroad promoter and a keen student of the economic and political problems which beset the growing country. His experiences served to confirm the doubts which he had begun to entertain in Europe concerning the tenableness of Adam Smith's doctrines, and he concluded now that a protective tariff was indispensable to industrially undeveloped countries. At the suggestion of Charles Ingersoll, vice president of the Pennsylvania Society for the Promotion of Manufactures and the Mechanic Arts —the rallying point of the protectionist elements of the time—List prepared the *Outlines of Amer-*

ican Political Economy (Philadelphia 1827), his first attempt at a systematic formulation of his views.

Appointed United States consul in 1832, List returned to Germany and embarked upon an ambitious plan to organize a German railway system, a venture which although successful in itself proved a source of personal disappointment and even forced him to leave Germany for France. A prize offered by the French Academy in 1838 gave him an opportunity to rework his theoretical system and to give it a historical basis. The studies and experiences of these years he embodied in his best known work, *Das nationale System der politischen Oekonomie* (Stuttgart 1841; tr. by S. S. Lloyd, London 1885), appearing after he had settled permanently in Germany. Beginning with 1843 he published *Das Zollvereinsblatt*, devoted to the dissemination of his views, which were now supported by rising industrialism and respected by men like Metternich, Peel and Palmerston and began to exercise a decisive influence in molding public opinion in Germany. Material worries, however, combined with the opposition to his plan to establish an alliance between Germany and Great Britain hastened his self-inflicted death.

With the exception of Karl Marx no other economist has emphasized so strongly as List the close interrelation of the theoretical economic viewpoint and political factors. Economic doctrines had no abstract validity for him; he always examined accepted views and developed his own ideas in terms of concrete political areas at definite levels of economic development. He severely criticized the classical writers for failing to recognize the significance of the nation as the most important link between the individual and mankind. He saw the logical expression of the industrial and commercial supremacy of England in the economic principles of the classical school and deemed them unsuited to the needs of rising countries like Germany and the United States. The object of his writings accordingly was to present a theoretical system which should express the interests of countries occupying second or third rank but possessing the potentialities of first class nations.

Departing from the individualistic-cosmopolitan classical economics, which in its centering of economics around the theory of value revealed to List its atomistic-materialistic orientation, he made the concept of productive forces the core of his organic doctrine. Accordingly he opposed to the classical emphasis on division of labor his emphasis on the cooperative aspects of the productive process in society. His dynamic approach and his interest in the development of the productive forces led him to champion the protective tariff as a means of furthering the exploitation of undeveloped resources and of enabling backward states to rise to the rank of a *Normalnation*. The road to normal nationhood was pointed out in his theory of economic stages. The first state to emerge from primitive conditions was the agricultural, followed by an agricultural and manufacturing state, which in turn culminated in the agricultural manufacturing and commercial state based on the complete utilization of productive forces. Once normal nationhood is reached, the educational function of the tariff will have ceased and free trade will prevail.

Both for his emphasis on the reality of the nation and for his advocacy of the protective tariff List is generally considered as the spiritual father of the Zollverein. He was also hailed as the prophet of advanced capitalism. The latter estimate is, however, only partially justified. For although he consistently urged the development of industrial resources and of the new means of transportation he believed that it was the duty of the state to regulate economic life as well as to curb individualism, and the subsequent overindustrialization would have seemed to him a distorted image of his ideal of a *Normalnation*.

EDGAR SALIN

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LISTER, FIRST BARON, JOSEPH (1827–1912), English surgeon. After graduating in medicine from the University of London in 1852 Lister

went to Edinburgh to study surgery under James Syme. He became professor of surgery in the University of Glasgow in 1860, succeeded Syme at Edinburgh in 1869 and from 1877 to 1892 held the chair of surgery at King's College, London. Ignorant of the work of I. P. Semmelweis and O. W. Holmes on the prevention of puerperal fever and of Jules Lemaire's prior recommendation of carbolic acid as a chemical antiseptic, Lister, under the influence of Pasteur, after two years of experimentation on means of preventing suppuration in wounds published in 1867 his important papers (in *Lancet*, vol. ii (1867) p. 95–96, 353–56, 668–69), one of which was entitled "On the Antiseptic Principle in the Practise of Surgery." The intense and protracted antagonism to his innovation was due largely to the current ignorance of the germ theory, to the failure of other surgeons to attain similar efficacious results by the use of his methods and to rival techniques proposed by other contemporary authorities. Lister's erroneous insistence on the need for the antiseptic spray machine to create an antiseptic atmosphere surrounding the wound justified criticism and did much to delay the endorsement of his meritorious work, which, however, brought him international fame during his lifetime. Although the substitution of general asepsis for antisepsis in hospital practise was a direct development of his theory, Lister deplored the complicated and expensive precautions which it involved and persisted in his belief that the antiseptic method offered sufficient protection. Antisepsis remains an important aspect of surgical practise in military field hospitals, where it is difficult to achieve general asepsis.

BERNHARD J. STERN

Works: *Collected Papers*, 2 vols. (Oxford 1909).

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LISZT, FRANZ EDUARD VON (1851–1919), German jurist. Liszt was born in Vienna, the son of Eduard von Liszt, who later became general procurator. He made his career, however, in German universities; he was successively professor at Giessen, Marburg, Halle and Berlin.

Liszt achieved great fame as the leader of the sociological school of criminal law in Germany. A *Deutsches Reichs-Pressrecht* (Berlin 1880) was followed by the first edition of the fundamental *Lehrbuch des deutschen Strafrechts* (Berlin 1881; 25th ed. by Eberhard Schmidt, 1927) and the founding in the same year of the *Zeitschrift für die gesamte Strafrechtswissenschaft*. In 1889 Liszt together with the Belgian Prins and the Hollander van Hamel founded the Internationale Kriminalistische Vereinigung (I.K.V.) in order to promote international activity in the investigation of the causes and the methods of control of crime. To serve the same purpose he later edited the *Strafgesetzgebung der Gegenwart in Rechtsvergleichender Darstellung* (2 vols., Berlin 1894–99), the first German exposition of the criminal law of all civilized peoples; this was the forerunner of the monumental *Vergleichende Darstellung des deutschen und ausländischen Strafrechts* (16 vols., Berlin 1905–09), in which Liszt was also a specially important collaborator. Liszt ventured too into the field of international law. Indeed his *Das Völkerrecht, systematisch dargestellt* (Berlin 1898; 12th ed. by Max Fleischmann, 1925) is a standard work on the subject.

Liszt was the initiator and champion of modern criminal law reform far beyond the borders of Germany. As the leading teacher of criminal law he gathered about him a large circle of pupils, many of whom now teach in Germany and elsewhere. In the criminological controversy of his time Liszt appeared as the advocate of clear sighted special prevention and as an extreme opponent of retaliation. He directed his attack toward the criminal himself: not the deed but the doer was to be punished. Among the many campaigns for specific reforms upon which he embarked may be mentioned his largely successful attack upon short term imprisonment.

ROBERT VON HIPPEL

Consult: Hippel, Robert von, and Lilienthal, Karl von, in *Zeitschrift für die gesamte Strafrechtswissenschaft*, vol. xl (1918–19) 529–34, 535–43; Hurwicz, E., "Franz von Liszt und die soziologische Strafrechtsschule" in *Neue Zeit*, vol. xxxviii (1919–20) 79–86; Goldschmidt, J., in *Archiv für Kriminologie*, vol. lxxiii (1920–21) 81–92; Dahl, Frantz, *Franz von Liszt* (Copenhagen 1919).

LITERACY AND ILLITERACY. The term literacy may relate either to a society or to the general mass of individuals within a society, according to whether its implied antithesis is preliteracy or illiteracy. In the first sense, a society becomes literate as soon as some group or caste within it begins to make written records.

In the second sense literacy denotes a condition which, with the possible exception of a few isolated instances such as the post-Diaspora Jews, has never acquired a normative value until the modern era. The analysis of literacy in ancient and mediaeval peoples must content itself with establishing the vocational and social groups in possession of writing and with speculating upon the factors tending toward its more general diffusion. A wide range of variation is revealed. Between the first introduction of writing among the oriental peoples probably in the fourth millennium B.C. and the decline of the Roman Empire, an imposing superstructure of learning, literature, science and philosophy had been erected upon the basis of literacy; but in the eyes of the cultivated classes literacy itself represented only the most elementary form of initiation. In any society developed beyond the stage where the ability to write is a sign of magical powers or an emblem of exclusiveness, literacy, once acquired, tends to assume the aspect of a faculty akin to sight and hearing and attention shifts to the objects upon which it is to be trained. The crucial problem, therefore, is to isolate the drives which in all civilizations have stimulated certain individuals to seek literacy and which in the modern period have impelled rulers and institutions to prescribe it.

Literacy, or what the ancients called the knowledge of letters, designates the ability to communicate through the medium of the abstract symbols of a script. Within such a definition there is room for a wide variety of emphases and interpretations. The Mohammedan peoples have in all ages tended to consider a person literate if he could merely read, while the ancient Egyptians, who worshiped their elaborate hieroglyphics as works of art, placed stress upon the capacity to write. Among all literate peoples prior to the invention of printing an important distinction existed between persons conversant with the calligraphic script, which was used for books, and those who knew only the cursive hand, which served for the ordinary purposes of business and social intercourse. Again it has been definitely shown that in the fifteenth and sixteenth centuries persons who could write were far outnumbered by those able to read. In particular it was long considered proper for women of refinement to be able to read books of devotion or romance as well as matters pertaining to household affairs but both unnecessary and ungenteel for them to write. For all people during the first three centuries following the invention of printing the compulsion for reading was distinct from that for writing. These varied interpretations are reflected today in the diversity of standards employed by different governments in collecting statistics on literacy. A realistic note has been struck in recent years in certain attempts to differentiate between literates and semiliterates, between effective and formal literates.

The development of the first systems of writing involved a process of conventionalizing pictographs, which are everywhere prevalent among primitive peoples, into an ideographic or semi-ideographic code. Wherever this took place, whether in Chaldea, Egypt, China, Crete or in a modified form among the Aztecs and the Mayas, it was accomplished by the presiding authorities of a highly centralized, relatively stable social and political organization; that is, by a royal or a priestly caste or through the cooperation of the two. The first uses made of writing are in line with its origins. The priests of Egypt and Babylonia inscribed on stone or clay the precepts of their religion; the kings of the same countries and of Crete, with an eye to their reputation with posterity, had the annals of their reigns published, sometimes on the flagstones which paved the palace temples, as in Babylonia, sometimes on their tombs, as in Egypt and Minoa. The business of the political bureaucracies early came to be transacted in writing: tax lists were drawn up; treaties were made; official correspondence was carried on—such correspondence as has been preserved in the Tel el Amarna letters of the fourteenth century B.C. The more complex the political and legal structure, the more the written documents multiplied: during the period when the whole Egyptian Empire was regarded as one vast economic organization under the administration of the court, an enormous number of people were required to keep the official accounts. These writers, whose stock in trade is analogous to that of the typist in modern society, although they sometimes functioned also as notaries, were the forerunners of the scribes of the Roman and mediaeval chanceries.

That the Egyptian aristocracy as well as the professional scribes was able to read and write is attested by the long prevailing custom of including among the burial objects papyrus rolls, by means of which the departed noble was to make manifest to Thoth, the god of writing, a command of the written word. But with the

growing commercial intercommunication during the second millennium B.C. the extension of literacy was the work primarily of the trading classes. The contracts signed by Babylonian traders as far back as the third millennium may be regarded as the prototypes of those numerous commercial documents which are to be found covering the centuries from 2000 to 1000 B.C., when Babylonian was the lingua franca through which merchants speaking varied languages communicated and made their written transactions. The final perfection of the proto-Phoenician alphabet around 1000 B.C. greatly facilitated written transactions and the keeping of commercial records, and during the period following the substitution of Aramaic for Babylonian as the international commercial language of the eastern Mediterranean the alphabet was transplanted to various cultures, such as the Greek, the Roman, the Arabic and the Indian, and in the process of adaptation to the needs of the different languages was gradually rendered more expressive. In a thriving commercial state such as fourth century Athens, the metics of the Piraeus, preoccupied with the practical demands of trade and shipping, used their literacy as a day to day tool, in a sense quite different from the more cultured citizen, who tended to regard literacy as the initial step toward a rather elaborate mental and spiritual culture. A similar utilitarian attitude toward literacy was manifested in a more ponderable fashion by the Korean shopkeepers and merchants of a later age, who adopted the easily written phonetic alphabet, while the scholars and government officials continued to struggle with the complex Chinese characters. In India at the present time the castes composed of merchants as well as of professional people reveal a higher rate of literacy than many of those above them in the social scale.

The first unmistakable evidence of a widespread popular literacy is in Ptolemaic Alexandria, although there is good reason to believe that the citizenry of Athens could in general read and write. From an analysis of various types of legal contracts it has been estimated that of the middle class populace of Alexandria 60 percent of the men and 40 percent of the women wrote Greek; to these must be added the considerable number of Alexandrians who wrote only Egyptian, which had been rendered less exclusive by the gradual modification of the cumbrous if beautiful hieroglyphs and the development, probably about 800 B.C., of the cursive demotic script. An extensive reading public, a phenomenon which first emerged along with the commercial book trade in fifth century Athens, is indicated by the publication at Alexandria of large editions of chapbooks, feuilletons and allied types of popular literature. With the vulgarization of literacy in Athens and Alexandria the aura of magic which had continued even as late as the Homeric age to surround the written word was gradually dissipated. The increase in the size of the reading public was made possible by improvements in the technique of manufacturing papyrus, which could be manifolded far more easily than the clay materials of the Babylonians or the waxed tablets and potsherds still largely used in classical Greece for letters and accounts. Despite the technological improvements, however, the high cost of papyrus prevented its general use, while the parchment, which from the second century on gradually replaced it, was still more expensive.

The high percentage of literacy in such cultured urban centers as Athens and Alexandria cannot be taken as typical of classical antiquity as a whole. In the broad rural areas the mechanisms of oral transmission—the direct appeal to the eye and the ear—which characterize the preliterate tribal stage, were still operative with only minor modifications. The carpenter of Bethlehem, desirous of drawing to himself the fishermen of Judaea, traveled to them afoot and spoke to them as they drew in their nets. Even in the urban centers the fact that a large percentage of the people could read and write does not presuppose a premium upon literacy. Although Aristophanes derided the illiterate person as one devoid of the barest rudiments of culture, there is no indication that the ancient state, and little that the philosophers in their utopias, felt sufficient concern over the further extension of literacy to recommend official action.

This attitude of indifference is made explicit by Cicero: the general populace, if it should be so impelled by its daily needs, might become literate, but it was no concern of the aristocratic public servant steeped in Greek culture. That the Roman populace was so impelled may be inferred not only from the profusion of reading and writing schools (*ludi*), which supplemented the family system of instruction, but also from the extreme dependence of Roman civilization on general familiarity with the written word. A similar dependence in Athens may be revealed by future archaeological discoveries, which have already shown that Athenian laws

were proclaimed in writing, as had been the Code of Hammurabi in Babylonia; but the case of Rome is less conjectural. Not only were laws, treaties, decrees of senators and magistrates commonly published on stone, bronze or wooden slabs, but military orders were communicated in writing; soldiers wore armor or carried leaden sling bolts inscribed with letters; tiles used by the military forces in building their quarters were stamped with the name of the cohort; pottery makers cut their names upon their wares; announcements of official candidatures were painted on walls, as were advertisements of gladiatorial games and even of runaway animals; tokens (tesserae) for admission to public banquets and for the dole of grain bore the names and addresses of their holders; calendars and almanacs were prepared for the use of the farmers. At the beginning of the fourth century A.D. there were about thirty public libraries in Rome and several in the provinces. Among later emperors, such as Trajan, Alexander Severus and Diocletian, there is scattered evidence of an awakening sense of the advantages which might accrue to the state from a literate populace; but lacking any underlying theory, such sporadic attempts at dissemination of literacy may be regarded only as tenuous adumbrations of a still distant age.

The conditions of literacy in the Middle Ages are explicable in terms of the disintegration of the old Roman Empire and the simultaneous emergence of the Christian church as the civilizing agent of the western world. The body of sacred literature on which Christian dogma was built became the monopoly of the religious hierarchy; what the unordained man needed to know could be transmitted to him orally through the local priest. But the value of literacy for the hierarchy itself became increasingly apparent with the efforts of the church to imitate the administrative system of its imperial prototype. Moreover the molders of western monasticism, such as Benedict and Cassiodorus, not entirely liberated from the cultural standards of the Roman upper classes, incorporated the copying of manuscripts into the monastic routine. The scriptorium, with its patient scribe, became a common feature of every Benedictine as of every Irish monastery.

The cessation of economic intercourse and the transition to feudal anarchy during the early Middle Ages rendered obsolete important functions previously performed by literacy. Until the eighth century some commerce continued to be carried on through the agency of Jews, Italians and Levantines; but after the closing of the Roman lake by the advance of the Arabs the literate account keeping merchant class disappeared and towns, at least north of the Alps, were virtually erased. The producer-trader of the Dark Ages who carried his goods a few miles to a primitive market place, where he haggled with other producer-traders, had no more need of the art of reading and writing than the inhabitants of the self-sufficient manor. The larger landowners and the more important lords and princes employed members of the clergy as notaries and scribes to keep their simple records. Until the crusades messages from one feudal lord to another were commonly conveyed by deputies who communicated them by word of mouth. The ambitious Charlemagne with his vast empire had exceptional reasons to regret his illiteracy; the Holy Roman emperor Henry IV seemed so remarkable to his contemporaries that they specifically recorded his ability to read a letter, "from whomsoever it had been sent." But for most lay potentates illiteracy involved little inconvenience. On the other hand, the idea of some cultural or spiritual initiation into the functions of the noble class was old in the feudal tradition; and as the relations of church and nobility became more closely knit, it was natural that the initiation might come to resemble clerical education. There is evidence that in the eleventh and twelfth centuries a great part of the nobility had acquired the elements of reading and writing Latin either at the monastic or cathedral schools, which existed for the education of churchmen, or from clerks resident on their estates. Isolated documents have sometimes been advanced to prove occasional mediaeval efforts to extend literacy to the masses: when analyzed, they usually signify only a renewed and unsuccessful attempt to exterminate illiteracy among the clergy, as in the case of Charlemagne's decree of 789, or an injunction to parish priests to teach their lambs to be good Christians—a discipline for which literacy was no prerequisite.

Italy, less clericalized than northern Europe, had managed, if less successfully than mediaeval Byzantium, to keep alive the ancient ideas of culture. With the rise of the universities of Bologna and Salerno there gradually spread throughout Europe an impulse which revived the legal and medical professions in their ancient form; the result was to extend the sphere of earthly functions which were felt to be rooted in a body

of written literature. A development still more far reaching in its consequences also appeared for the first time in Italy: as trade began to revive in the wake of the crusades and a new mercantile class evolved, the advantages of literacy for business purposes became once more apparent. It is probable that the Florentine merchant learned to read and write as early as the eleventh century. Two centuries later the Hanseatic merchants discovered the possibilities of the same instrument. These enterprising merchants who wished to emancipate themselves from the employment of priestly scribes were in fact pioneers in the struggle to separate educational facilities from church control. At first they apparently sought to gain entrance into the cathedral, monastic or parish schools; at a more advanced stage they brought about the foundation of municipal schools, which multiplied particularly in Germany, Holland and Denmark from the fourteenth century onward. Soon they found themselves in need of subordinates to keep their accounts and write their letters, and it became advantageous for lower strata to attend the reading and writing schools. Eventually they freed themselves not only from the priest but from the Latin tongue. From the fourteenth century on municipal and state documents as well as mercantile account books are written in the vernacular. Once the latter was conceived as a possible medium for writing as well as for speech, literacy lost much of its mystery as well as much of its difficulty. A Frankfort locksmiths' *Gesellenbuch* and numerous documents in municipal archives show that German artisans were not uncommonly able to write as early as 1400; and there is evidence that English artisans not only could write but were expected by their masters to do so. While Thomas More's estimate that "not three fifths of the English people" could read in his day was certainly not based on unimpeachable statistics, it is obvious that the dame, grammar, guild and charity schools were imparting a considerable degree of literacy. The regulations with regard to benefit of clergy indicate the same development. In England after 1351 the ability to read had entitled an individual to the privilege; when in 1489 the English government drew a distinction between members of the clergy and other literates, it appears to have been reacting against abuses resulting from the growth of literacy. Undoubtedly the late Middle Ages already reveal that tendency to use reading and writing as a tool which was to increase concomitantly with the progressive complexity of business relationships and commercial intercourse.

To a certain degree all modern thought and activity with regard to literacy have been conditioned by the inventions of printing and of cheap paper, which made possible the slow transformation of western civilization into what Spengler has called a *Buch-und-Lesen Kultur*. Reading could never have become a common activity of the general public so long as the only book material remained the rare and expensive parchment and the only method of transmission the hand of the copyist. The careless, sometimes illegible cursive hand which in the fifteenth century rapidly replaced the Carolingian minuscules in itself reflects the inadequacy of the old mechanism of bookmaking, even for the restricted upper class circles who could afford books and had leisure to cultivate reading as an accomplishment. While it was on the whole to the learned and leisure classes that the religious literature, the romances and the humanistic writings composing the bulk of the incunabula were addressed, the inventions furnished the technical prerequisites for the genesis of an unlimited reading public, once conditions should impel the masses to learn to read.

The revolution which the emergence of these conditions constituted has been created by the coalescence of two factors: the shifting of emphasis to the common man, either because his interests were considered significant in themselves or because of his importance as a unit in a collectivity; and the increased stress on the written word as a medium of communication. These pressures were brought to bear by the Reformation. Precisely because it was a revolt against the authority vested in the institutional church the Reformation implied the invocation of a higher authority. In calling upon the Bible Luther took a course not unprecedented in the annals of heretical or semiheretical movements. The Waldensians, the Wycliffites, the Hussites, had likewise appealed from the personal to what the Jesuits contemptuously called the "paper" pope. Wycliffe and the followers of Huss had rendered the Bible into the English and the Czech vernaculars respectively; it had even been translated into German before Luther's time. The innovating force of the Reformation consisted in the extent to which Luther popularized the conception of the direct communion of all men with the divine through the written word.

To what extent the Reformation led in fact to the immediate extension of literacy is obscured in the mists of prestatistical times. It is

certain that it played the leading role in turning the printing press to the production of literature significant to the general public. Besides numerous editions of Bible translations in German, English, French, Swedish and Dutch the Reformation introduced an enormous supply of catechetical literature written in simple, easy language. It transferred the terrain of theological controversy from the learned tractate to the popular pamphlet. In the case of Germany it created the modern written language out of the speech of the market place and the peasant. Between 1516 and 1524 the number of presses printing in the German tongue increased ninefold; and before 1525 two thousand printings of Luther's writings alone had appeared. But the fact that the reformers at the very beginning of the warfare turned to the vernacular only serves to prove the previous existence of a wider sphere of literacy in the native than in the Latin tongue; as early as 1520 Hutten explicitly advanced this explanation for his abandonment of Latin. Perhaps the public addressed by the early reformers consisted in no small part of that merchant and industrial class which had already discovered the value of literacy for economic operations. Moreover in view of the generally demonstrated disinclination of the masses to seek literacy of their own volition at an appreciable cost of effort, any momentous change had to wait upon the organization of pressure from above as well as upon the creation of adequate schooling facilities. While Luther is generally considered the father of the German *Volksschule*, there is evidence that he, and certainly that Melanchthon, divided between religious compulsion and the humanistic predispositions of the time, were interested primarily in secondary education. The decrees concerning popular education issued in the reformed German states during Luther's lifetime are remarkable for their sparing references to reading and writing. It was not until 1559 that a prince of Württemberg evinced a conviction that oral transmission was inadequate by insisting that reading and writing be taught and not until 1642 that such a function, from being a moral and religious duty, was transformed by a duke of Saxe-Coburg-Gotha into a political obligation.

But however tardily it may have become operative, the Reformation has been throughout the modern era a pervasive force in the propagation of literacy. The vitality of this force even today is demonstrated by the work of Protestant missions in diffusing the Bible, now translated into four hundred different languages, among the unlettered peoples of Asia and Africa. Periodically recharged by pietistic awakenings or by the formation of new sects, the original impulse produced manifold movements in the seventeenth and eighteenth centuries for the eradication of the barriers between the common man and the fount of authority. In the Scandinavian peninsula, Denmark and Holland it constituted either the sole or the primary inspiration for the systems of parish and municipal schools which, even before the nineteenth century educational laws, made literacy a typical phenomenon among the natives of these countries. In England the first movement was organized in 1701 by the Society for Promoting Christian Knowledge, which "being touched with zeal for the honor of God and the salvation of the souls of the poor" founded charity schools to teach reading and writing. By the middle of the century, when the society was instructing about 50,000 children, the Wesleyans had begun to found schools; and from 1785 on the great Sunday school movement, initiated by Robert Raikes, taught reading and writing along with Methodist or Anglican religious principles. In Scotland the relation between the Sunday schools and the literacy of the poor cotter, who in Burns' poem "reads the Sacred Word," is direct. Humanitarian as well as religious teacher, Wesley wrote, edited and published a veritable library of literature suitable for popular consumption and including books of poetry, travel, etiquette, domestic economy, health and hygiene. The entire Wesleyan organization was converted into a gigantic book agency for the distribution of this literature, achieving such success that, according to one apologist, no Methodist home, however humble, lacked a Bible, a hymn book and the *Methodist Magazine*.

In most of the countries unaffected by the Reformation the mediaeval attitude toward literacy underwent relatively slight modification. The principal teaching order of the Counter-Reformation, the Jesuits, convinced that the Catholic hold on the masses was to be retained or recaptured only through the mediation of those in influential position, concerned itself almost entirely with the upper classes. Under the stimulus of competition in Germany, it is true, Canisius matched Luther's catechism with a Catholic document equally popular and some of the Catholic states made timid overtures toward the creation of schools. But no wide-

spread or successful attempt to disseminate literacy among the masses emanated from Catholic influence in any country prior to the nineteenth century, with the important exception of France. There a Catholic philanthropic movement, first manifested in the creation of teaching orders for the elementary education of girls, culminated in 1684 in the establishment by Jean Baptiste de la Salle of the Institute of the Brothers of the Christian Schools, which at its suppression in 1792 was instructing 36,000 pupils in reading, writing and the catechism. No doubt this order and similar agencies had some part in the growth of literacy in France during the eighteenth century; an audacious estimate of this growth, based on an analysis of marriage registers, indicates a rise from 29.06 percent for men and 13.97 percent for women in the years from 1686 to 1690 to 47.05 percent and 26.87 percent respectively between 1786 and 1790.

Probably, however, in France as in England and Germany the most notable extension of literacy in the early centuries of the modern era took place among the middle classes and was at first associated with the capitalistic revolution, the development of foreign trade, the improvement in systems of accounting and the repeated verification of the causative connection between pertinent information and economic rewards. Along with this process came a new stratification of literacy as well as of economic and social position. Since a favorable balance of trade in the mercantilistic state was thought to depend largely upon the supply of cheap labor, the intrenched interests discountenanced the teaching of reading and writing to the working classes, who might be lured by these instruments away from servile tasks and docile attitudes. Those who had attended a charity school or one of the fee charging reading and writing schools, such as the *deutsche Schulen* in Germany, the dame and grammar schools in England and colonial America or the writing schools in the cities of France, might "contemn," as an English writer said in 1763, "those drudgeries for which they were born." Not essentially altered when removed from the mercantilistic framework, this argument became perhaps the most important obstacle to the general dissemination of literacy. In its extreme form it inspired South Carolina in 1724 and several other colonies or states during the next hundred years to impose severe penalties for teaching the Negro to read and write.

It was in this climate that the apotheosis of the diffusion of knowledge accompanying the popularization of natural rights philosophy was introduced. The "reading habit" was enormously expanded during the eighteenth century but, with a few exceptions, hardly beyond the limits of the middle classes. To their interests and predilections were addressed the new types of reading matter, the periodical, the daily newspaper, the novel, the libraries "devoted to things useful to mankind." The organized efforts of the English commercial booksellers to inculcate the reading habit were confined to the classes who could buy their wares and who had reason to hope for cultural or political improvement from perusing them. The stereotype of the "well informed man" appeared and deviation from it became stigmatized as a social delinquency, but the man was the bourgeois.

Despite the circumscribed limits of its immediate effect, however, the natural rights philosophy advanced the first elements of the ideology upon which the modern movement for the general dissemination of literacy has been based. Elevating the reasonable action and the earthly perfection of the individual to a height no less empyrean than Luther's ideal of religious salvation, it indicated a path to this goal scarcely more difficult than the reading of the Bible. In order to be saved from error man had only to read and know—a thesis succinctly expressed in Thomasius' *Einleitung in die Vernunftlehre* (first published in Latin in 1688), "wherein is pointed out, in an easy manner, comprehensible to all reasonable persons, no matter of what class or sex, the method of distinguishing between what is true, probable and false." Individual differences, inherited traits, counted for little or with Helvétius for nothing since external stimuli were all important in human development. While Voltaire, subscribing in general to this philosophy, might declare that it did not apply to the laborers on his estate, it inevitably focused attention upon the literacy of the masses, once it was fused with the idea that the relation of the common man to society was something besides economic. A temporary fusion was accomplished prior to the French Revolution, in the enlightened despotisms of Catherine II, Maria Theresa and Frederick the Great, although in the case of the last two religious and other considerations were heavily alloyed with enlightenment. But the revolution came with the advent of democracy.

While a long chronological gap intervenes between doctrine and fact because of the vicissi-

tudinous career of democracy itself, most of the important reasons for making general literacy a concern of the democratic state were crudely formulated by Condorcet, the most zealous advocate of popular instruction of the French Revolution. Drawing the implications of the democratic gospel of equal opportunity he showed, to use the words of Kant, that it was a "sin against the dignity of man, against humanity itself," to withhold from any individual the necessary tools for his own development. The second assumption which propelled the nineteenth century movement for compulsory literacy was associated with the transformation of the passive subject of monarchy into the active citizen of democracy: freedom from superstition, delusion, imposture and the disturbances of human passion—all to be attained through the diffusion of knowledge—became a condition of civic competence. Popular instruction became the conventional anodyne offered by democratic dogma for both the fears of the interests and the suspicions of the people. The argument for literacy gained strength with each additional movement or program to extend the suffrage; and it is significant that the utilitarians, the first loud advocates of universal suffrage in England, carried on a fervent campaign for the establishment of reading and writing schools. James Mill summarized the case by declaring that if a reading public were created in any part of the world, "the prejudices on which misrule supports itself would gradually and silently disappear."

The logic of democracy as expounded in England, America and France by the utilitarians, Price, Paine, Whitbread, Robert Coram, Benjamin Rush, Noah Webster, Nathaniel Chipman, Condorcet and Cormenin merged with the response of humanitarianism to the conditions produced by the industrial revolution. Urbanization, the deracination of peoples, the long hours attending the factory system, the absence of holidays, which had recurred at such frequent intervals in the mediaeval and early modern economies, and the division of labor, which, as Adam Smith pointed out, had obliterated the cultural value of daily work, had isolated the working classes from their traditional pleasures and vehicles of instruction. Some humanitarians, like Lancaster and Bell, whose monitorial systems provided a technique for mass production of literacy, the Anglican National Society (founded 1811) and the British and Foreign School Society (founded 1814) solved the problem by inculcating Bible reading. Others seeking to create a substitute for the pageants and spectacles of the village community wrote fiction for working class consumption. Brougham, the pupil of James Mill, attempted to apply the nostrum of the philosophers, the diffusion of knowledge. The net result was the appearance between 1810 and 1830 of enormous quantities of new reading matter modeled on the literature previously created for the bourgeoisie but reduced to a cheaper, more popular level. As the old regime had produced the *Mercure de France*, 1836 produced Girardin's *Presse*; Brougham's *Penny Magazine* of 1832 was the counterpart of the *Gentleman's Magazine* of 1731. That the masses themselves were becoming increasingly convinced of the value of reading is indicated by the extensive sales of the new literature.

Brougham is the typical representative of the point of view which finally overcame the opposition of the traditionalists and the economic interests and impelled the liberal state to assume the burden of promoting literacy through popular education. Addressing himself to the middle classes while organizing the instruction of the poor he sought to show the correlation between ignorance and discontent. When at the beginning of the eighteenth century the founders of the charity schools had defended Bible reading against the mercantilists and the Mandevilles as a method of preventing crime, their argument had carried little weight because the working classes, whether criminal or not, were still essentially economic robots. But rationalism and utilitarianism impinged upon the social consciousness in an era of popular tumult, riots and machine smashings. For these aberrations they presented both a diagnosis and a cure. Brougham himself, Hannah More and numerous other writers of popular tracts gave concrete evidence of the possibility of using the printed word to serve the interests of conservatism. Even so the forces of tradition were difficult to subdue. In 1802 a law was passed requiring that poor children "apprenticed" to factories be taught to read and write; select committees of the House of Commons from 1816 on revealed a "shocking degree" of illiteracy among the lower orders. But only the cumulative effects of mob turbulence and the new sources of terror arising from the extension of the franchise finally forced the interests to promote education as a means of teaching the working classes to "govern and repress their passions." The important advances in English elementary education during the nineteenth century came in 1833, one year

after the first Reform Bill, and in 1870, three years after the second extension of the franchise. The first official attempt to collect statistics on illiteracy was made in 1839, the year of the Chartist riots.

The forces affecting the growth of literacy in Europe had as a natural result of the transplantation of peoples and of cultures operated in modified form also in colonial America. Wherever a community of Dutch Reformed people settled or of Lutherans or of the German Reformed church or of New England Puritans or of Presbyterian Scotch-Irish, the influence of the church was exerted in spreading literacy; in colonial Massachusetts, Connecticut and New Hampshire public provision was made for vernacular schools, wherein the populace was initiated into the *New England Primer*, that abridged vehicle of Calvinistic orthodoxy which "taught millions to read and not one to sin." Agitation for general enlightenment of the masses began in the eighteenth century in the pamphlets of the radical democrats; but the resistance of the propertied interests combined with the influence of the frontier delayed determined consideration of the problem until after the first quarter of the nineteenth century. Following the introduction of universal suffrage in 1828, however, when the propertied classes were more susceptible to any proposal that promised to safeguard political stability, the democratic and humanitarian propagandists succeeded in popularizing the ideal of universal elementary education and ultimately in effecting the establishment of free, compulsory primary schools throughout the greater part of the country.

The first American statistics on illiteracy were collected by the census of 1840, one year after the English estimate, which had been based on the number of persons unable to sign the marriage register; in the outburst of liberal sentiment which culminated in the July revolution and produced the elementary education law of 1833 the French minister of Public Instruction had published as early as 1827 data derived both from the marriage register and from figures relating to conscript soldiers. As democracy became actualized, propelling a continuous trend toward universal instruction, the problem of illiteracy transferred from the realm of theoretical controversy to that of administration tended to become the monopoly of bureaucrats and statisticians or of private agencies cognizant of fields untouched by public education. While the figures are neither precise nor, as between countries, comparable, it may be stated with reservation that in England the percentage of illiteracy fell from 33.7 for men and 49.5 for women in 1839 to 5 and 5.7 respectively in 1893 and in France from 55.2 between 1827 and 1829 to 5.7 in 1894. In the United States despite the effects of immigration the rate had declined to 10.7 percent in 1900. Belgium, influenced by French political forces and ideology, reduced its rate from 51 percent in 1840 to 14 percent in 1894.

In the German states the eradication of illiteracy during the nineteenth century was motivated by a force no less compelling than democracy—the nationalistic fervor first engendered by the impact of the French Revolution. The stress laid, for instance, by Fichte upon the cultivation of the human resources of the nation implied the same policy toward literacy as did the drive to exalt the national literature by enshrining it in the hearts of the common people. Although greatly diluted in the process of transmission to the political authorities these ideals finally resulted in the establishment in Prussia and ultimately throughout Germany of systems of compulsory education, giving effective form to a principle which largely under the influence of Protestantism had been accepted in most of the German states by 1800. Since, in the words of Baron von Altenstein, the government assumed the responsibility of "making the common man's lot agreeable and profitable to him" without "raising him out of the sphere designated for him by God and human society," the dissemination of literacy encountered little opposition from the upper classes. It proceeded with few complications until in 1893 and 1894 the percentage of illiteracy among the conscripts enrolled in the imperial army was only .24. Since 1913 the German authorities have considered it unnecessary to take statistics.

During the course of the century, as the general levels of national culture became an object of attention, the literacy rate was widely regarded as one of its most significant indices. Economic, religious and political explanations for the difference in rates between northern and southern Europe were overlooked and the conviction grew that illiterate peoples were, if not inherently inferior, at least unredeemed. Under the influence of the assured threat to the national literacy rate and of the assumed threat to American standards of civic competence the United States Congress in 1917 passed over the president's veto a law imposing a literacy test upon

all immigrants and operating, as a precursor of the immigrant law of 1927, to exclude natives of southern and eastern Europe.

The literacy test for immigrants represented a borrowing from a practise already associated with suffrage laws both within and outside the United States. Throughout the greater part of its history the literacy test for voters has been used as a weapon against specific groups which for some reason or other were considered dangerous to the dominant group. Its convenience as a method of restricting the suffrage without violating the fundamentals of democratic dogma, since the latter could be interpreted as implying universal literacy, was recognized as early as 1795, when it was incorporated into the constitution of the year III in order to keep the sans-culottes from the polls. Under somewhat analogous circumstances certain of the South and Central American republics, notably Brazil, have resorted to the same device. In Europe it has been used chiefly in countries where literacy was largely restricted to the upper classes, such as Portugal, which in 1872 had an illiteracy rate of 82 percent, Italy, which in the same year had a rate of 69 percent, and czarist Russia; and in such countries it might justly be called "pedantocratic" or "mandarinal." In the United States it was first introduced in Connecticut in 1855 and two years later in Massachusetts, the occasion being the inpour of tumultuous Irish immigrants and the organizers of native American indignation being the Know-Nothing party. When the earlier devices for nullifying the effects of the Fifteenth Amendment were becoming outworn, most of the southern states, beginning with Mississippi in 1890, instituted literacy tests, usually combined with ingeniously phrased alternatives in the form of grandfather or property clauses, which it was hoped would exclude the Negro without affecting the illiterate white. Of the other tests which have been imposed in the last forty years in New York, Wyoming, Maine, California, Washington, New Hampshire, Arizona and Oregon the New York test, which is administered under the supervision of the state department of education and attempts to examine functional rather than merely formal literacy, is generally regarded as the most effective.

The countries outside the sphere of greatest literacy did not remain entirely unaffected during the nineteenth century by the formulation of the new standards. While America, England and France, unsatisfied with the promise of future improvement held out by their compulsory education laws, were beginning to attack the problem of adult illiteracy, countries like Japan, Italy and the Balkan states, aspiring to gain a competitive status in the family of nations and linking the eradication of illiteracy with escape from economic exploitation, made attempts of varying success to create systems of universal elementary education. In the case of the minorities of the former Hapsburg, Turkish and Russian empires the movements against illiteracy, although until recent years they failed to make much headway, were an integral part of the larger technique of nationalist revival, which depended in its beginnings upon the dissemination of national literatures and upon the resurrection of the national languages. Similar manifestations have occurred among the Irish and the Flemish, who have sought to perpetuate their native tongues by making them written languages rather than merely spoken dialects. Conversely, the political entities embracing minorities have sometimes looked to the inculcation of literacy in the official language as a method of checking the centrifugal forces of a heterogeneous population.

In a spectacular fashion the World War focused attention upon the problem of illiteracy, which became a factor of immense moment in the propagandizing efforts accompanying the unprecedented mobilization of national resources. The recent American movement against illiteracy, including the immigration law of 1917, the proliferation of agencies for adult education, the holding of sectional conferences, the organization of the ardent National Illiteracy Crusade and the eventual creation of the National Advisory Committee on Illiteracy in 1929, may be traced to the discovery that 24.9 percent of the American soldiers were functionally illiterate and to the inference that a still larger proportion of the American public was immune to the propaganda being broadcast by newspaper and signboard. The political changes which followed the war have also operated to give impetus to the movement against illiteracy in the so-called backward nations. The new republics of Europe, subjected to the force of democracy, have been further spurred on by the prestige of western standards. In China the Mass Education Movement, which dates back to the westernization campaign of the first decade of the present century, began in the period following the war to conduct a more efficiently organized offensive against illiteracy. Its construction of a

simplified code of ideographic symbols in the most widely used popular dialect (*Pei-hua*), which has partially overcome the staggering difficulties of the Chinese written language, has been supplemented by a concerted movement to produce translations, new works and newspapers in the vernacular. But no civilized country with the exception of India is besieged by more forces antipathetic to the spread of literacy than China: the lack of responsible government, the bankruptcy of the system of taxation, civil dissension, undeveloped national resources, an enormous preponderance of rural population, heterogeneity of language, have all acted to prevent even the gathering of statistics on illiteracy. Turkey, facing a similar mechanical problem in the complexity of its script, has adopted a Latin alphabet of twenty-nine characters and through the establishment of national schools is making progress in educating its largely illiterate populace.

Perhaps the most sustained and comprehensive attempt yet made to "liquidate illiteracy" is being carried on in Soviet Russia. Until the time of Peter the Great the Greek Catholic church held somewhat the same monopoly of literacy as the Roman church in mediaeval Europe; *diak*, the Slavic term for churchman, became the designation of the scribe as "clerk" had in western Europe. In spite of the sporadic efforts of Peter and of Catherine, the former motivated by his conception of westernization and the latter by the ideas of the Enlightenment, to disseminate elementary education it may be assumed that in 1783 the percentage of illiteracy was at least equal to that of the rural population—about 94 percent. The attempts of various shades of humanitarian reformers to reduce this deplorable percentage provoked on the part of the repressive czarist regimes measures of retaliation, the violence of which was aggravated by the close actual interrelation between the intelligentsia, especially the *narodniki*, and revolutionary movements. According to the census of 1897 the percentage of illiteracy was 78. The modern movement, inspired by Lenin's dictum that without literacy "there can be no politics, there can be only rumors, gossip and prejudice," has set out to create the necessary foundation for the Soviet campaign of "political and economic enlightenment." Through the innumerable "liquidation points" which have been founded in community houses, factories, shops and village reading rooms the Soviet government is progressively reducing the percentage, 43.3, indicated by the census of 1926. Between 1913 and 1928 the circulation of newspapers increased from approximately 2,500,000 to 8,250,000. An interesting experiment has been made in the manner of dealing with the languages of minorities, many of which have under the Soviet government been committed to writing for the first time; by carrying on education in seventy different languages the government has complicated its own problems but greatly curtailed the difficulties confronting the illiterates themselves. Fascist Italy also illustrates the successful adoption by an antidemocratic movement of a technique tried and proved in the political milieu against which it is a reaction. It is probable that the percentage of illiteracy computed at 28 percent for 1922 is being progressively reduced as a result of the reforms undertaken under the supervision of Giovanni Gentile.

Modern statistics on illiteracy are available for little more than half the population of the world—the principal lacunae being in regions of Asia, Africa and South America, where literates undoubtedly represent trifling minorities. But figures on illiteracy even when derived from the most efficient of statistical inquests provide precarious bases either for comparison or for deductions as to their absolute validity. The margin of error, far from negligible in the case of the most comprehensive basis, the census, becomes magnified when the rate is obtained, as in England, from the marriage register, which in the year taken in the table concerned only 1.5 percent of the total population. Variations due to the minimum age considered are also significant: in Bulgaria, for instance, when the rate of illiteracy in 1920 is computed as a dividend of the total population, it is 55.54 percent; as a dividend of those over five years of age it is 50.47 and of those over ten, 46.75. A specific age group may reveal a rate widely divergent from the total rate: thus in Russia according to the census of 1926 only 4.3 percent of men twenty-four and twenty-five years old and 11.8 percent of women of nineteen were illiterate. In many countries, such as Russia, India and regions formerly under Moslem domination, sex affects the literacy rate: the Indian census of 1921 showed 16.1 percent of males over ten and only 2.3 percent of women to be literate according to the relatively stringent criterion imposed. Total rates also obscure the factor of regional distribution, giving no indication of the often tremendous disparity between urban

ILLITERACY RATES IN REPRESENTATIVE COUNTRIES OF THE WORLD

POLITICAL DIVISION	DATE	GROUP COVERED	PERCENTAGE OF ILLITERACY
Europe			
Belgium	1920	8 years of age and over, unable to read and write	7.9
Bulgaria	1920	10 years of age and over, unable to read or write	46.7
Czechoslovakia	1921	7 years of age and over, unable to read and write	7.0
Denmark	1921	Of school age and over, unable to read and write	0.1
England and Wales	1924	Signing the marriage register by mark	0.3
Finland	1921	15 years of age and over, unable to read or write	30.1
France	1921	10 years of age and over, unable to read and write	8.2
Hungary	1920	6 years of age and over, unable to read and write	15.2
Italy*	1921	Over 6 years of age, unable to read	28.0
Netherlands	1918	Signing the marriage register by mark	0.3
Poland	1921	10 years of age and over, unable to read	32.8
Rumania	1920	10 years of age and over, unable to write	45.0†
Scotland	1923	Signing the marriage register by mark	0.3
Spain	1920	10 years of age and over, unable to read and write	42.9
Sweden	1921–22	Liable to military service, unable to read and write	0.2
Switzerland	1906–10	Signing marriage register by mark	0.4
U. S. S. R.	1926	Above 7 years of age, unable to read and write	43.3
North America			
Canada	1921	10 years of age, unable to read	5.1
Mexico	1921	All ages, unable to read and write	62.2
United States	1930	10 years of age and over, unable to write in any language	4.3
South America			
Argentina	1913–24	Average of conscripts and enlisted men	24.0
Brazil	1920	5 years of age and over, unable to read and write	71.2
Chile	1920	5 years of age and over, unable to read	40.8
Asia			
India	1921	10 years of age and over, unable to read and write a short letter	90.5
Japan	1925	Conscripts unable to write and figure	0.9
Africa			
Egypt	1917	5 years of age and over, unable to read and write	92.0
Union of South Africa	1921	All ages, unable to read and write	90.3

* Figures for Tuscany only, which may be deemed fairly representative of Italy as a whole.
† Estimated.
Source: For the United States: United States, Bureau of Foreign and Domestic Commerce, *Statistical Abstract of the United States* (1931) Table no. 26; for U S.S R.: American-Russian Chamber of Commerce, *The Economic Handbook of the Soviet Union* (New York 1931) p. 132; for all others: compiled from United States, Department of the Interior, Bureau of Education, "Illiteracy in the Several Countries of the World" by J. F. Abel and N. J. Bond, *Bulletin*, no. 4 (1929).

and rural illiteracy. Again, the amount of illiteracy figuring in the total may in large degree be the share of a particular group, such as the Negroes in the United States. Despite the reduction of almost 50 percent in Negro illiteracy between 1880 and 1920 as a result of the opening of public educational facilities to Negroes, the rate in 1920 still hovered around 22.9 percent. But even when these and other factors have been weighed, the statistics still fail to measure the numbers effectively rather than merely formally literate.

Once literacy has been generally diffused among the masses of a society, it tends to become indispensable to the social process and the nonconformist is penalized by isolation. Rousseau omitted reading and writing from Émile's youthful education, satisfied that Émile would seek these arts of his own accord as soon as he came into touch with the literate world. Besides multiplying the uses of writing, the diffusion of literacy atrophies many of the mechanisms of oral communication which except in periods of general maladjustment spring up spontaneously in societies predominantly illiterate. The press superannuates the town crier; the peripatetic minstrel disappears as the circulating library grows. But while the individual in an illiterate society is likely to have more contacts with the group than the illiterate in a modernized society, these contacts are, in the ordinary course of events, limited to a narrowly circumscribed environment. As one of many social and technological factors accelerating communication, the diffusion of literacy has played an important part in the breakdown of barriers between atomistic groups and in the expansion of the range of stimuli to which the common man

is exposed. The faith of the early nineteenth century that "reason" and content would necessarily flow through the new channels of communication provided by literacy is still echoed: in twentieth century America strikes have been laid to uncontrolled passion and the passion itself to illiteracy. However misguided the faith appears when accompanied by its premises, it would be rash to say that the nineteenth century advocates of literacy were wholly wrong in their conclusions. The two outstanding recent revolutions have begun in countries with large percentages of illiteracy and perhaps in their campaigns for liquidation the revolutionary governments now established only prove their awareness of the human tendency to give assent to the written word, whether the word speaks for tradition or for innovation.

HELEN SULLIVAN

See: WRITING; EDUCATION; ADULT EDUCATION; LITERATURE; PRESS; PRINTING AND PUBLISHING; INNOVATION; MOBILITY, SOCIAL; MIDDLE CLASS; DEMOCRACY; NEGRO PROBLEM; NATIVE POLICY; ISOLATION; IMMIGRATION; URBANIZATION.

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LITERATURE. Viewed as a whole a body of literature like a body of magic or a system of law is part of the entire culture of a people. The characteristic qualities that distinguish it from other literatures derive from the characteristic qualities of the life of the group. Its themes and problems emerge from group activities and group situations. Its significance lies in the extent to which it expresses and enriches the totality of the culture. Although the groups with which anthropology ordinarily concerns itself are preliterate, the functionalist standpoint as developed in anthropology is illuminating when applied to the setting of literature in a culture. Viewed thus literature is neither

an esoteric activity, as the formalists would contend, nor a purely instrumental activity, directed to external ends in the group life, as the extremist element in the Marxian school would have it. It is an integral part of the entire culture, tied by a tissue of connections with every other element in the culture; yet possessing a function of its own and ministering best to the life of the group where it performs that function with the greatest artistry and the deepest congruity with the basic assumptions and the accredited purposes of the group. And it should be added, to point the complexity of relationship, that these basic values are not something given but are the end products of a past in which literature has itself played a substantial part in the process of cultural construction.

Literature is thus both culture forming and culture ridden. Its connections with society are so integral and pervasive that there is a temptation within every sociological school of criticism to press to the conclusion that society is the play itself and not merely the backdrop against which the play is enacted. Certainly the range of social influences on literature is as broad as the entire range of operative social forces: the prevailing system of social organization—including the class structure, the economic system, the political organization and the deeply rooted institutions; the dominant ideas; the characteristic emotional tone; the sense of the past and the pattern of the future; the driving aspirations and "myths," and their relation to the contemporary realities. There is nothing in the compass of social life that does not play its part—small or large, directly or by deflection, immediately or by varying removes—in giving literature the impress of its surrounding world.

The sort of determinism which this involves is not, however, the rigid and mechanical determinism that has played havoc with the charting of relationships in the entire realm of social life. It cannot afford to isolate a single element in society—whether economic or ideological—and assign to it a causal role in the final determination of literature; nor can it premise an immediacy of relation between literature and the social factors or a quantitatively equal response to the impact of social forces. The whole of the social process—including material, conceptual, emotional and institutional elements—may be regarded as containing the potential determinants of the direction and character of the literature of a period. At any time the pace and character of social and intellectual change sharpen issues, pose problems, precipitate conflicts and establish harmonies that are distinctive for that time; a "social situation" is brought into the area of operative influence which, in its selection of elements and in its orientation, is unlike any other social situation. And while this selective process is projecting certain dynamic and significant issues into the consciousness of the time and obscuring others, another selective process is at work, from the side of the writer, singling out those elements which have managed to produce an impact on him and weaving them into a pattern which is compatible with his standards of art and his view of human life. Where these two mechanisms of selection interlock in the work of a particular writer a point of contact is established between literature and society.

In terms of such a dynamic and selective process some justice can be done to the subtle and complex connections that link literature to the operative social whole. Critics who attempt to test the hypothesis of a socially determined literature by measuring the degree to which certain great writers were absorbed in the public issues of their day set up a mechanical unilinear determinism which they find no difficulty in destroying. Thus it might be shown that Chaucer's poetry is a poor mirror of the more obvious political issues of the England of his day, and that even Shakespeare was alive to the glory of the victory over the Armada but not to the realities of the enclosure movement. But such a line of inquiry assumes a simplicity that does not exist in the functioning of the social process. Any appreciable change in the social process communicates itself to the body of literature not directly but through a ramifying network of social relations, with every chance that its force may be multiplied or deflected in the devious process of transmission, or that its influence will be complicated, distorted or nullified by some other change arising elsewhere in the social process. For society is neither neat structure nor unobstructed process: it is a complex of end products from the past, of functioning institutions in various stages of development, of tangled idea and emotion, of hesitant purpose and frequent cross purpose. In such a milieu the surprising fact is not that there is so little clear evidence of the transmission of social change to the literary process, but that there is so much. In the case of particular

writers the relation seems of course even more erratic than in the case of a body of literature. For to what extent the social process will push its significant changes across the threshold of the writer's consciousness, and to what extent he will embody even that proportion in the emotional pattern that constitutes his artistic vision, can be explained only by the conjunction of his own biography with the history of the society.

The essential task of literature is to lay bare the foundations of human emotion: to this revelatory process the social forces can give only direction, impetus and an ideological impress. It is a commonplace of criticism that literature transcends the boundaries of the particular culture, that it speaks "the universal language of the human heart." Whatever the culture, its basic literary themes are the same—birth and death and love and jealousy, individual conflict, communal experience, triumph and defeat. They are linked to the biological bases of life, to its psychological invariances, to the necessities of the collective experience. It is significant that the literatures of the most varied cultures have meaning and beauty for an outsider even when their social organizations seem to him bewildering and their basic values absurd. For the artistic imperative to which literature is the response is universally operative. Everywhere the writer takes the stuff of experience in the life of the group and washes it in the powerful emotional stream of his personality. The drab incident is made vital, the abstraction human and dramatic, the idea imaginative. Homer's gods survive across the centuries because they are humanized; Dante's theme of divine love is made immediate and dramatic; and the group activity that is the theme of modern proletarian writing is translated into terms of its incidence on individuals. For the literary process society is only the river bed; the stream is the flow of human life.

In fact the two processes are scarcely as distinct as that. The emotional pattern of the individual writer, which could claim, if anything could, to be a primary datum, is as a matter of actuality socialized in the very process of construction, and the individual artistic vision is a selection from potential elements; the emotional response of the reader is the product, as Tolstoy points out, of a sort of social contagion and certainly proceeds in an emotional milieu already socially conditioned; the valuation of the writer and the guidance of the reader—the dual task of a highly subjective body of criticism—proceed by canons which, to avoid being chaotic, must be socially rooted. Literature is whatever reaches through words to the human; but in the process the entire social realm must be traversed.

Literature is seen in clearest social perspective as an institution—a cluster of structure, usage, habit, idea, technique—the whole containing a principle of growth of its own but responding always to the change and stir in the varied life of the institutions with which it is interwoven. And as such it consists of a scheme of controls, through which it performs its social function by organizing the verbal expression of experience and thus integrating on an emotional level the activities of the group with its underlying view of life.

The basic material of literature is thus experience. But the experience that has found expression in literature has never been as broad as that of the entire culture. It is always a limited experience that is thus embodied—the life and the vision of life of particular groups within the culture. In the literature of Periclean Athens it is the experience of the male citizenry that is expressed, but not of the metics or the slaves or the women; in the literature of imperial Rome it is the experience largely of a leisure aristocracy and not of the industrial population or the serfs or, with some exceptions, of the provincials; in the literature of mediaeval Europe it is the experience only of a fighting, jousting and love making nobility; in the literature of China it is the experience of a high officialdom or of a petty bureaucracy, but not of the masses of peasantry. Sometimes the confines of expression have been determined by the class groupings, sometimes by the distribution of literacy and leisure, sometimes by arbitrary and traditional tabus. In fact literary history could be approached illuminatingly from the point of view of the forces that have drawn various groups and strata of the culture into or kept them out of the body of literary expression. In the western world there has been since the breakdown of feudalism a steady extension and widening of the limits, so that new groups have been continually drawn into the literary process—first, generally, as readers and then as writers. The entire period since the commercial revolution has been dominated by the rise of the middle class to the literary hegemony in the new capitalist nation states that

succeeded the feudal regime. And the anticapitalist revolutionary movements of the last hundred years have carried with them, both as result and as an integral part of their purpose, the opening of channels of expression for the experience of the underlying population—from the workmen's literature of Chartist England and of the France of George Sand to Gorki's delineation of the life of outcasts in czarist Russia on the eve of the revolution and the direct and unvarnished writing of worker correspondents in Communist Russia.

The large tidal changes in making new and untapped resources of experience available for literary expression have resulted from changes in class stratification. Another accession of experience, that of women, was made possible by the breaking down of the tabu which women's inferior economic position had placed about the masculine monopoly of writing; the timidity with which Jane Austen and Emily Dickinson wrote indicates the gap between their period and that of the present when it is often possible for a woman to have, in Virginia Woolf's phrase, "a room of her own." But tied up with these changes affecting class and sex groupings there have been shifts of intellectual horizon, contacts with hitherto unfamiliar cultures, reorientations in the effective moral codes, which have broadened and deepened the experience of the entire culture and which have uncovered new levels within the individual consciousness. The effects of the crusades and of the Renaissance on western European literature, of the geographical and scientific discoveries on Elizabethan literature, of the rise of urban life on the eighteenth century novel, of European expansion into the exotic regions of the Far East on late nineteenth century French literature, of the disintegration of rigid bourgeois morality upon the entire range of western literature at the turn of the twentieth century, as exemplified especially in Hardy, Ibsen and Dreiser, and of psychoanalytical research and speculation on the modern novel are instances of how the large and pervasive social forces uncover new strata of experience. The forces mentioned are of course in no sense primary or crucial; they are themselves merely links in the endless interlocking chain of causation and concomitance that constitutes the process of history; but from whatever source they proceed, the part they play in broadening, enriching or impoverishing the field of human experience constitutes their primary significance for literature.

Literature in turn in organizing this experience in language patterns heightens it as well; it selects and points out evocative values not appearing on the surface. But to do this consistently requires more than a philosophic or deeply human sense of values, although that is indispensable. It requires also a preoccupation, much like that of the philosopher or the scientist in his own realm, with the dramatic and significant in human behavior; a disciplining of sensitivity and perception; a familiarity with a far flung body of traditions; a mastery of a technique. In this sense literature takes on the apparatus and the conscious scrupulousness of the other arts. Vergil's desire, after years of constant polishing of the lines of the *Aeneid*, to destroy the whole poem at his death because some passages still remained inferior and Flaubert's balancing of *le mot juste* are merely the more familiar instances of an inherent pressure toward refinement in the literary process. The result is the differentiation of a specialized literary group from the main stream of the activities of a culture. Such a group tends to become intellectually ingrown and to narrow the field of its exposures. Euphuism and Gongorism, the schools of Donne and of Rimbaud, the barriers within which Joyce or the Sitwells or Gertrude Stein enclose their incommunicable symbols, are end products of the introversion that is implicit in every stage of the building of a literature. Here as elsewhere in the culture process the inner impulsions of a specialized discipline must be reconciled with the larger demands for growth and freshness.

Literature thus faces continually the need for rebarbarization. In terms of the response to that need many of the excursions into new regions of experience take on meaning. The most persistent of these has been the recurring cult of the folk and the folk mind. The folk itself is rarely drawn into the ambit of literary expression, except indirectly through the frequently sentimentalized mediation of "literary" treatment. But it does find its expression orally in ballads, tales, heroic songs, fables, proverbs, gnomic sayings and legends. Whatever its origin, this folklore or folk literature grows by repetition and accretion and constitutes at any time the larger proportion of the verbal expression of a culture. In periods before the formation of a literary language, as in Russia's dark centuries before Lomonosov, and among groups cut off by economic subjection, isolation and illiteracy from individualized literary

expression, as with the peasant populations of Europe and the American Negroes and hill folk, the folk literature is the only literature. Because such folk expression appears to rise straight from a deeply rooted experience and because it appears to be the product not of a single great individual talent but of successive generations living highly patterned and custom encrusted lives, writers and critics have found in it a vigor, an immediacy and a refreshing sincerity that they have commonly found wanting in the "literary" literature. Since the mediaevalist movement of the eighteenth century this admiration of the folk mind has played a large part in critical thought and in literary expression. That Goethe and Grimm expressed great admiration for the Jugoslav folk ballads was as characteristic of their day as the contemporary American interest in Negro spirituals. In fact many have found in the folk mind the source not only of the folk literature but ultimately of all literature. In the wake of the romantics nineteenth century literary theory held that the literature of mediaeval Europe was not the result of individual creation but was forged in the rich life processes of the mediaeval folk. This is now radically questioned, and the acceptance of Bedier's researches on the origins of the *chansons de geste* would indicate a tendency, at least in the case of the more sustained literary works attributed to the folk mind, to emphasize the creative role of particular individuals in gathering and fusing into an individualized expression what must in the beginning undoubtedly have been traditional folk material.

It is not difficult to find in the intellectual stream since the early eighteenth century the currents which have produced the emphasis on the folk mind. The cult of nature which found expression in the Lake poets as well as in Rousseau and the *philosophes*; the differentiation between the simple sincerity of the rural mind as contrasted with the civilization-contaminated life of the cities; the construction of a "noble savage" whose idyllic happiness flows from his obedience to "nature's simple plan"; the discovery by nineteenth century anthropologists of primitive civilizations, whose tightly knit cultural integrity lay in the dominance of custom and the supposed subordination of the individual to the group, and the idealization of the European peasant by intellectual and literary groups as far removed as Tolstoy and the Russ—these were not so much the forces behind the folk cult in literature as themselves a related expression of deeper lying social forces. A function of rebarbarization similar to that which contact with the folk spirit has performed for the literary mind has been performed also by cults of the heroic, from the eddas and the Homeric heroes and the Prometheus legend to the Napoleon pattern in European literature and the superman philosophies of Carlyle, Emerson and Nietzsche. More recently a new primitivism has arisen, largely under the stimulus of anthropological researches into primitive art and sex life and imperialistic contacts with primitive groups, and constituting something of a literary Gauguinism. In another realm of experience many writers, following in the wake of the Freudian researches, have plunged into the jungle of the submerged and repressed sexual impulses; or have, like D. H. Lawrence in *Lady Chatterley's Lover* and James Joyce in *Ulysses*, broken down the tabus that, through moral codes and through the more directly institutionalized forms of censorship, have in the western Christian civilizations hedged about the exploration by literature of the physical sexual experience. All these literary allegiances —to the folk mind, to the hero cult, to the primitive mode of life, to preoccupation with sex activity—spring in common from the continually felt need for the rebarbarization of a literature in which the experience represented is continually threatening to grow thin. But they differ from the large movements which brought the experience of the middle class, the proletariat and women within the range of literary expression; they do not represent on the part of the writers a direct exposure to new areas of experience. They are derivative and vicarious. They have been as much escapes from experience as accessions of it

Before a developed technique emerges in any literature even the best of individual achievement is but random expression, and whatever progress it has made in charting experience may at any time slip away again. In this sense the accumulated technology of literature—what may be called, in paraphrase of Veblen, the state of the literary arts—becomes part of the social heritage. All literary technique is concerned in some way with the manipulation of words and word patterns. The word, with its sound values and its emotional connotations, is the basic constituent of the technical apparatus, just

applied. Language may thus be regarded as implementing literature, and, as Boileau emphasized, the richness and flexibility of a language will often condition the potentialities for greatness in the literature which is linked to it. The crude stage of the Roman language, as reflecting the undeveloped culture of Rome, at the period when Ennius first attempted to force it into the complicated literary molds of Greece, accounts in no small part for that lack of *ars* with which the more flexible Augustans taxed him. The emergence of literary expression in the vulgar tongues of the Romanic nations had to wait upon the slow process of linguistic evolution in which the competing languages attained at least a rudimentary balance. The advance represented by the Pléiade in France and the Elizabethans in England is incomprehensible without an understanding of the immediately preceding or accompanying climax in linguistic development. Much of comparative literary criticism has concerned itself with such contrasts of the basic linguistic materials and their effect upon literary expression. But on the whole it is probable that most of what seems thus in the nature of linguistic differences may be referred back to differences in the texture of the culture. For while it is conceivable that words should serve only as quasi-mathematical symbols of communication and that whatever emotional values they ultimately contain should derive from their technical handling and their literary patterning, it is actually true that the words themselves come already laden with pleasure values and with connotations out of the culture. It is upon this substructure of connotation that the literary artist builds his superstructure of emotional values; and he often finds that because the words that he uses are already emotionally tinged they are not bare obedient instruments of his will but living things whose accretions from the culture are hostile to his purposes. Language may thus be as much an obstacle as an aid to literary expression.

The literary technician arranges his language in word patterns, aiming thereby to achieve patterns of sound and thought which are emotionally evocative. Rhyme, rhythm and assonance belong in the first category; imagery and idea in the second. These technical elements may be combined into further patterns, as in the sonnet, the ballad, the classical oration or the epic poem. These larger patterns may vary from a more or less rigidly determined mold, such as the sonnet, to the larger literary types or genres, such as the drama or the novel. As technological forms these elements are products of a process of invention and development which must have involved a succession of individual experiments and adaptations, each building on the level previously reached. Brunetière placed a good deal of hope in a natural history of literary forms and styles, but the suggestiveness of his prologomena was never fulfilled by the results of his research. With few exceptions the origins are lost in the mist of history, and the developments upon them proceed by almost imperceptible gradations or, obscured in the creative process, elude all attempts at isolating them. The origins of the early clusters of nature legends, which may be found in very similar forms in Egypt, Babylonia, India, Judaea, Greece and the Celtic and Teutonic tribes, their relation to each other and the method by which they reached their historical distribution are still extremely controversial. With the epic there emerged a highly developed literary form, which winnowed and re-sorted the ballad clusters that had grown up about the myth legend content. But the processes by which these ballad clusters were forged into the formal epics are only dimly charted, as is also the transition from the dithyramb to the tragedy and from the village satiric songs to the comedy. With advancing research the origins of the novel and the short story are being continually pushed back to a remoter antiquity.

All literature which is of any value is of course invention; but the fashioning of new literary forms and genres involves a special sort of invention which bears somewhat the same relation to the creative process that invention in the industrial arts bears to the economic arts. But there is a greater inertia in the literary process: there is not the same pressure which capital accumulation and economic competition exert upon technological invention; nor is there the same rate of obsolescence which technical advance forces upon industrialists. But the sharpest difference lies in the fact that every literary form becomes a vested interest. The prestige of the tried pattern tends to deflect the craftsmanship of each writer from the search for new forms to the extraction of all the implications that the existing ones hold. The operative considerations are aesthetic rather than utilitarian, and the continuous need for effecting functional readjustments to a developing, larger situation is not as apparent in literature as in

economics. In fact aesthetic and sentimental considerations often induce a reversion to archaic forms.

But while such a functional adjustment is not apparent in the immediate sequence of experimental changes in literature, it would be dangerous to conclude that it was not operative in the larger areas of change. In fact the great importance of the study of the genre in literary history lies in the relation which it bears to the cultural compulsions of the period. These compulsions do not operate unswervingly and equally on individual writers: there is the obvious fact that every period shows so great a divergence of literary expression that there is often a greater affinity between two writers of different periods than between two of the same period. To that extent there is an element of significance in Lytton Strachey's remark that Pindar could have written under the Georges and Keats on the eve of Marathon. And in any period the process of literary experiment consists obviously of numberless innovations varying from tentatives toward a slightly changed form to heroic attempts at transforming an entire genre—each of these experiments responding to complex personal and often erratic motivations. The effect of the social forces of the period in determining the literary form is not a direct and unilinear one: it is selective. From the array of potential variations certain ones are over a period of time selected for survival. And the criteria of selection lie in the changing experience of the time. Changes in social structure and in ideological currents bring new experience, and this experience refuses to be crowded into the old forms. They are no longer adequate to express it. And the new literary forms that emerge out of the survival and persistence of certain experimental changes and the lapsing of others may be said to be functionally related to the new experience.

For example, the intensification of cleavages between social classes which tends to accompany a period of urbanization may result in the emergence of new forms or the reemergence of forms long neglected. The social realignments and tensions of seventh and sixth century Greece, which shattered the older tribal homogeneity, ushered in on the one hand a new and flexible type of personalized lyrical poetry, represented by Alcaeus, Sappho and Anacreon, and on the other the naturalistic satiric poems of Archilochous and Simonides of Amorgos. The further growth of the city-states stimulated the development of two new literary forms, the choral odes and the drama, both more adapted to the amusement and edification of the urban collectivities. The growing importance of urban life in the modern period, typified most strikingly in the activities of the Spanish towns, found its reflection in the picaresque novels portraying the urban sharpers who awaited their guileless victims from the country. The popularity of this genre in its French and English forms created a demand among the growing urban middle classes of these countries for a more wholesome use of the prose narrative technique. Thus the rise of the homely novel of sentiment and chastity, which became the hallmark of subsequent bourgeois culture, is best considered against the accompanying economic transformation rather than as a revival of the abstract novel form, which may be traced to the Hellenistic romances, or by the more archaeologically minded to Egyptian prototypes.

So closely is the literary form tied to the culture out of which it has grown that when another culture attempts to take it over there is a tendency toward a transfer of the ideological patterns of the older culture. Vergil, in an age which stood heir to the concepts generated in the long period of intellectual quest and spiritual restlessness that had intervened since Homer, attempted nevertheless to think of his hero and his problems after the patterns and in the atmosphere of the Homeric heroes. The mediaeval fame of Vergil in its turn deflected Dante's portrayal of the Middle Ages; although drawing upon the ethos of its own age the *Divina commedia* strikingly reflected, often unconsciously, the pre-Christian world. Tasso was led by his love for older models to stray from the narrow path of sixteenth century Catholicism, and the Puritan hatred of Satan was curiously transformed in Milton. The unsuccessful attempts of Chapelain, Mesnardière and the literary intimates of Richelieu to forge an epic worthy of the new dignity of France illustrate how futile may be the transplanting to an uncongenial soil of a form which flourished in the soil of its own culture. The epic machinery, which had been fashioned in anthropomorphic polytheism, collapsed when placed in a Protestant setting, as is indicated by the offense caused to Dr. Johnson's religious sensibilities by Milton's familiarity with God.

If the forms and genres of literature respond to the social compulsions of a period, the responsiveness of theme is even more striking.

There are of course permanent human themes that run through the literatures of all cultures, but in each cultural situation the basic theme is clothed in a new form. This may be illustrated by the varied treatment accorded the theme of love As Marx recognized, the sexual instinct is universal, but the forms of marriage and courtship vary with the underlying economic relationships. While not a few of the variations in the conception of love—at least as they are reflected in literature—seem adventitious, the relationship is generally clear. Infidelity, the recurring tragic theme of the ballad stage of society, becomes the spice of Restoration comedy. The love of the flesh, sublimated by the scholastic poets of the Middle Ages into love of God, remained to haunt the less unified generation of Petrarch and to delight the lusty burghers immortalized by Boccaccio. The mistress worshiped at a distance by the platonic troubadour in the last stages of feudal society was displaced by the insatiable Wife of Bath.

But the outburst in the fourteenth and fifteenth centuries of antifeudal satires and fabliaux which attempted to reveal the true character of woman in all its designing ramifications could not permanently supplant the tendency to sentimentalize the weaker sex. When the descendants of the insurgent burghers of those centuries became in their turn the intrenched middle class of the eighteenth and nineteenth, the genteel tradition of chivalry and sentimental love received a new impetus. It is significant, however, as a reflection of changing class ideals that the sentimental literature of the later period was intensely preoccupied with the institution of marriage and with the economic advantages of a successful marriage. Among certain of the romantic poets there is revealed a tendency to regard the woman as an intellectual equal, and with the growing social and economic emancipation of woman the modern novel is stressing the desirability of sexual as well as intellectual equality.

One of the crucial facts about a writer is his kit of values. This is recognized in criticism, where writers are characterized and classified in terms of their affiliation with one or another of a group of schools or literary philosophies, such as classicist, romanticist, realist, humanist, naturalist. These philosophies determine what they shall select for treatment and from what viewpoint they shall treat it. They represent the handle by which the writer grasps reality. But they are not only instruments in the creative process; they are also embodied in the critical method of an age, serving to canalize the creative stream. They arise in response to social change. A comprehensive change in the social structures may call for a reformulation or reorientation of the prevalent conception of life. This is accomplished in a systematic fashion by the philosophers and through an imaginative and emotional projection by the artists and writers. The connections between the two groups may often be distinctly traced, as in the cases of Euripides and Socrates, Lucretius and Epicurus, Boileau and Descartes, the Schlegels and Schelling, Zola and Comte. The direction of influence is generally from the philosopher to the writer, but the influence is not necessarily one-sided; in reality both formulations may be followed back to the same source.

Conceivably any *ism* can constitute such a philosophy for an author. Any issue that has been long wrangled over may attain the dignity of a school and then of a movement, and after being fought for tenaciously may end by organizing literary expression. Actually there have tended to be certain relatively stable points of view that have served this purpose. Whether these points of view are permanent aspects of human thought, as has been claimed for classicism and romanticism, is very doubtful. Such a division of the field normally involves a straining and extension of each term, so that it becomes practically meaningless. But it must be admitted that there are discernible throughout literary history certain poles between which literary expression has oscillated. The power attributed to the gods and the invisible forces guiding human life measures man's estimate of the limitations of his own power. The sense of human power and self-sufficiency shown in the *Iliad* or the eddas, where the gods are symbols of the superhuman courage of the warrior, has never proved lasting. Homer is followed by Hesiod and the Eleusinian mysteries, *Beowulf* and the *Battle of Maldon* by *Sir Gawayne and the Green Knight*. The anthropomorphic is engulfed by the animistic, by a folklore of magic and witches and monsters. Instances could be multiplied from the ancient and mediaeval literatures of recurring cycles of humanism and supernaturalism. But even in those literatures the antithesis is oversimplified. And by the time of the Renaissance, in which so many historical traditions and fresh social forces converged and cultural boundaries were broken

down, the idea of polarity is no longer useful. In the heightened confusion each writer had to find or fashion for himself an artistic credo to serve as a center of stability. And if this credo narrowed his imaginative scope or distorted his vision of reality, it was only a hazard that has to be run in every imposition of a more or less formal philosophy upon an artistic process.

But every writer has not one but two philosophies—his more or less conscious artistic credo and, lying deeper than that, his often unconscious vision of life and scheme of values. The first is the rhetoric of his writing; the second its logic. Through the first he is assimilated to some "school" within the craft; the second fixes him in the setting of his larger world—his place in the social structure, his economic position, his orientation toward the vital issues of the day, his responsiveness to the contemporary aspirations and realities. In a writer such a social *Weltanschauung* is likely to lie not on or near the surface but out of sight, where it is the more deeply embedded and the more difficult to quarry.

This more basic philosophy involves the relation of literature to the totality of society. But society is in this case too inclusive a term to be useful in analysis. It must be split up into elements which fall, to start with, into two main groups—those relating to social organization and those relating to ideology. In the first group may be placed technology, economic activity, the organization of the state, the structure of classes, social relations of dependence and domination, the important institutions and the distribution of power; in the second intellectual temper, emotional tone, ethical and religious conceptions, acsthetic achievements. The Marxist approach subordinates the second group to the first, making of it a superstructure (*Überbau*) which rests on the first as foundation. It is truer to say, if the inquiry is into the forces exerting an active influence on literature, that it is responsive to the whole of society, including not only the social organization but also the ideological structure, of which literature is itself a part. And it is responsive to the whole of society seen not structurally but dynamically, so that at any time it is only the elements that have been projected by change and conflict into the arena of operative forces that need to be considered.

Literature will be thus most responsive to the dynamic of a society in transition. Social change is going on at all times in all social orders: there is no stationary state. But the sense of it and the compulsions it sets in motion vary in intensity just as change itself varies in pace. When the pace becomes sufficiently great so that it no longer represents merely variation within a social system but a sequence looking to its breakdown, the result is a transition society. By its very nature the period of transition has in it elements at once of disintegration and construction. It does not start until something that was a unity begins to break down; it does not end until something new that is a unity has been achieved. Between those termini the sense of wrack or the vision of construction, the stress of conflict, the emergence of order, leave a deep impress on experience. But it is a fevered impress, lacking the strength and firm dignity that arise out of an integrated culture. Routh points out that the *Iliad* shows the marks of having been written in a society that was a unity, the *Odyssey* for a conquered race in a society that had crumbled before the Dorian invasion. Petrarch wrote in an Italy whose Dantean unity—an ideological unity, not political or economic—was breaking up. Shakespeare wrote when Elizabethan unity was in the forging, with the moving vision of the emergence of a new collectivity—English nationality—before him; the metaphysical poets, descending the arc, wrote in the break up of the Elizabethan unity. There is in both the Elizabethans and the metaphysicals the feverish tone of a transition literature; in both a preoccupation with death; but while in the Elizabethans death was the great tragedy, it held for the metaphysicals a strange fascination. In the post-war disintegrative period of modern capitalist society, with the strong focusing of its contradictions, has come again an interest in death, represented strikingly by Thomas Mann and Robinson Jeffers; the one looking upon it as the soil out of which art and beauty spring, the other looking upon it as the final breaking through to reality—the only escape from the body of this life.

In the entire complex of forces making up a society the economic organization, and especially the class structure, have quite generally, under Marxian influence, been singled out as determining the form and the idea patterns of literature. Translating this into terms of a changing society it has been the dynamic of the class structure—the class struggle—that has been thus singled out. The assumption that this has

always affected literature directly is used only by the less critical thinkers of the school; the more considered position is that it attains its effects as a selective process and generally through the mediation of the ideological elements in society. The impact of society on literature lies in the dynamic convergence of both sets of factors—social organization and ideology—each influencing and influenced by the other. The richest body of material that has yet been uncovered for the study of this complex relationship lies in the history of the periods of economic transition in various cultures from the tribal social organization to the feudal, from the feudal to that of petty trade and industry and from that to capitalism. In the history of the capitalist social system the significant relationship is that between capitalistic enterprise, individualist thought and the romantic strain in literature. The present period, which is considered by Marxians to be a transition period representing the disintegration of capitalism, is being widely analyzed from this general point of view.

The processes by which literature has responded to the operative social forces are the ordinary processes associated with the life of institutions. Innovations and tradition, insurgency and the vesting of interests, cultural borrowing and native growth, the carry over of intellectual patterns, the compulsive power of myth—these processes, found throughout the cultural fabric, have also left their mark on literature, adding their purposes and rationale to its own. But literature is also an active instrument: through its evocative power it molds behavior, carries over the propaganda, conscious or unconscious, of its intellectual setting, plays its part in building and breaking social movements and creates beauty values to invest an old order or sanction a new.

The withdrawal of Gautier and the Parnassians from the daily preoccupations of men indicates the first serious disintegration of an age old convention regarding the position of the author in the social group. When language was first being forged through a process of isolating tonal and sound symbols for emotional experience, the creator of new words and new verbal rhythms experimented in the presence of his fellow tribesmen, gauging the success or failure of his experiments by the response of the listeners. Similarly the welding of discrete verbal clusters into sustained conceptual patterns, such as riddles, charms and proverbs, was an organic development conditioned by the immediate interplay between the collectivity and the verbal-rhythmic craftsman, irrespective of whether he had acquired a specialized status as medicine man or priest or was still an impromptu entertainer and exhorter. In such a literature anonymity was the prevailing convention, since the emotional or religious value of the words rested upon their authority as expressions of the collectivity rather than as the personal creations of an individual.

Between this crude, more or less spontaneous literature, concerned primarily with the bewilderment of primitive man in the presence of the mysterious and hostile forces of nature, and the fully matured self-confidence of the anthropocentric epic lies a nebulous period of tribal development. At the end of the transformation emerged the clearly individualized figure of the tribal chieftain, around whose person revolved the major currents of tribal activity, political, military and cultural. Increasingly aware of his distinctive position in the tribe, he found a useful agent in the person of the literary craftsman, who had likewise come to occupy a more specialized status in the group.

Although it is no longer believed that the Homeric cycle was transmitted orally from one generation of bards to the next, the actual rendition in the court of the chieftain took the form of a recital accompanied by music and usually interspersed with formal, rhythmic dancing. At such a stage of literary development there was no clearly drawn distinction between the creative craftsman and the reciter who might graft on to an inherited body of literature a few embellishments of his own. Through such interpolations the Sanskrit epic cycle grew in the process of transmission to even larger proportions than did the original nucleus of the *Iliad* or *Odyssey*. The concepts of originality and plagiarism were the offspring of a much later, individualistic age. Even in mediaeval Europe the distinction which has sometimes been drawn between the troubadour who created the poem and the jongleur who publicly recited it is somewhat of an abstraction, since the troubadour was often forced by exigencies of fortune to publicize his wares in person, while, on the other hand, the jongleur often introduced into his recitation a not inconsiderable amount of his own handiwork.

The essentials of the relationship between the heroic chieftain eager for personal or family

glory and the craftsman who could clothe these yearnings in a beguiling rhythm of sounds and emotions are discernible in the varied disguises which this relationship took throughout antiquity and the mediaeval period. The element of direct, personal contact may be illustrated not only by the Homeric bards but by the recitations of the Sanskrit *sūta*, the Anglo-Saxon *scop*, the Scandinavian *scald*, the Icelandic *sagamann* and the Celtic *file*. In each of these settings the economic and social position of the bard was intricately bound up with that of the tribal chieftain. It is no coincidence that in Anglo-Saxon poetry the epithet for king is "gold giver," or that the thematic rhythm of many of the early heroic poems was dictated in no small part by considerations of how best to stimulate the tribal chieftain to a pitch of magnanimity wherein he would part with a maximum of gold bracelets and gold rings.

The regime of the tribal chieftain may give way, as it did in Egypt, Babylonia, India and China, to a centralized imperial bureaucracy; or, as it did in Greece, to a group of urban autarchies, at first tyrannic and later democratic. In the former case the literary craftsman becomes a rather indistinguishable element of the public cultural institutions, being assimilated either into the entourage of the court, as in China, or into the religious and commercial oligarchy of Babylonia and Assyria or into the priestly and scholarly circles of Egypt. The more individualistic role of the poet in seventh and sixth century Greece is a reflection in a different sense of the disintegration of the older tribal values of heroism and self-sufficiency. In a period of spiritual disillusionment, growing class antagonisms and political insecurity the literary craftsman was called upon to soothe the minds of troubled tyrants. The bibulous, aphrodisiac lyrics strummed out by Anacreon of Teos at the banquets of Polycrates, tyrant of Samos, are an example of escapism, comparable to the songs of Alcaeus and Sappho in strife ridden Mytilene. When toward the end of this long period of transition between the Achaean and Athenian civilizations the constitutional oligarchs were replacing the tyrants, Pindar served the aristocratic cause more intelligently by bringing the beauties of poetry from the banquet hall to athletic celebrations and civic ceremonies less remote from the restless populace.

The popularization of the Pindaric ode and the transformation of the rural dithyramb into the drama paved the way for a literary form still better adapted to the amusement and edification of the democratic citizenry of Athens. Under Pericles the role of the literary craftsman underwent a significant modification. The outstanding dramatists, regarding themselves primarily as public spirited citizens, whether on the battlefield, on diplomatic mission or in the theater, preferred civic acclaim, as expressed in the decisions of the popularly elected judges, to pecuniary reward. Since the dramatic medium had introduced a new element of expense, namely, the training of the chorus and actors and the scenic staging of the play, the wealthier classes assumed this indirect form of patronage, while the citizenry itself sometimes contributed sums of money to the writers. Even after the collapse of the proud spirited collectivity in the early fourth century, there is only scattered evidence of a return to the systems of patronage characterizing the ages of Homer and the tyrants. The later Hellenistic empire, reaching its highest level in the Alexandrian culture, is comparable rather to the early bureaucratic type of state; in both the literary craftsman is essentially a public functionary, who, like Callimachus, may combine his delicate, amorous verse making with graver responsibilities as supervisor of the museum. There may be found, however, one practise reminiscent of earlier systems of patronage—namely, the encouragement offered by new centers of culture such as Ephesus and Pergamon to literary craftsmen who were publicizing the legends of the locality.

The infiltration of Hellenistic culture into Rome may be attributed primarily to the material encouragement given by Roman aristocrats of the type of Scipio Africanus to the early exponents of Greek literature, such as Livius Andronicus and Ennius. The utilitarian values of a highly developed literature as a training school for the Forum and as a source of distinctive class culture insured adequate support to the early teachers and practitioners of literature; and despite the violent opposition of the less privileged classes in Rome and the rural aristocracy Greek literature had by the time of Cicero become firmly established. A native literature was still, however, to be forged. With the school of Roman poets which flourished under Augustus the relationship of the literary craftsman to the ruler enters upon a new phase. While Augustus may be said to have been like the more primitive chieftain in his desire for glory or like some of the Greek tyrants in seek-

ing to divert the populace from brooding on lost liberties, his delegation of the literary dictatorship to a person of the type of Maecenas was an innovation. It created a closely knit literary circle, conscious of a homogeneity of mutually stimulating aesthetic ideals which enabled the writers to overlook rather easily the more workaday realities of the patron-client relationship. The active critical judgment of Maecenas, like that of Pope Leo x in Renaissance Rome or of Lorenzo de' Medici in Florence, was a determining influence on the work of the literary craftsman in quite a different sense from that exerted by the Anglo-Saxon chieftains assembled in the beer hall or of the Dorian and Ionian tyrants reclining at their banquets. With the passing of Maecenas and the Augustan literary circle and the rise of a parvenu class of rentiers and *fermiers*, eager to vest itself with the paraphernalia of literary culture, the more disagreeable features of the patron-client relationship became increasingly evident. The gibes of Martial and Juvenal at the poetasters who glutted the client market and at the insensitive, calculating patrons who hoped to buy at not too great outlay the immortality promised by poets are prophetic of a later age.

The main features of the evolution of Roman patronage are repeated in Renaissance Italy and early seventeenth century France. The desire of the fainéant nobility for immortality brought an increasing number of writers to the aristocratic and papal courts to haggle over the price of a literary commission. Despite their fulsome dedications the Elizabethans managed to escape this menial attitude, thanks in large part to the fact that many of the leading writers enjoyed a source of revenue from the booming theaters but also to the more intelligent interest of the English commercial nobility, which in addition to lending the prestige of its name often, as in the case of Spenser, secured congenial sinecures for the more promising poets. The easy familiarity characterizing the relation between writers and patrons in the neo-Augustan age of Dryden and Pope and the mutually stimulating contacts of the literary circle and the political aristocracy were paralleled not only in the group around Maecenas but also the French literary group dominated by Boileau and accorded for a time official state support by Colbert. But with the rise to power of the "barons of the bags" under Walpole and among the bankers of Paris, the atmosphere of sincere and intelligent appreciation characterizing these literary circles was lost. The thunderings of Johnson in England and d'Alembert in France against the abuses of patronage mark the end of a literary institution which was being undermined by deeper economic currents than either assailant suspected.

Hitherto the literary craftsman had exercised an unmistakable function in the social process; he was an integral unit in the life of the leisure class, most at home in the highest political and intellectual circles. He had dramatized Socratic individualism; rationalized the Caesarism of Julius and Augustus; fired the spirits of the legions of William the Conqueror at Hastings; associated on terms of the closest intimacy with the sons of Frederick Barbarossa; followed the troubadour king, Richard Coeur de Lion, to the crusades; adorned the metaphysics of Thomas Aquinas; filled the Florentine populace with an unreasoning enthusiasm for Lorenzo de' Medici and the restless masses of London with love for the Virgin Queen. In the Sicilian court of the most idealistic and cultured of the Holy Roman emperors he had led the life of a highly prized bureaucrat, whose function it was to perfect new literary forms, such as the sonnet, more adapted to the rhythms of the popular tongue of modern man; at the courts of Marie de Champagne and Eleanor of Poitou he had sentimentalized a disintegrating feudal order and in an age of domineering women and crusading husbands evolved a ritual of love which elevated the lady of the manor to the level which befitted her; in the Wartburg castle of Count Hermann of Thuringia, the most illustrious and intelligent of the German mediaeval patrons, he had fired the spirit of Germanic chivalry.

During all this earlier period the literary craftsman proper, like the leisure class of which he was an integral part, was not deeply involved in the emotional life of the productive masses. To be sure, theatrical art, being by its nature more popular, had directed its appeal to a wider group. But genuine theatrical activity had been confined to a few periods—either periods of democratic enthusiasm, as at Athens, or of an incipient, untutored culture, as in early Rome; or periods marking the emergence of an unlettered class, such as the guild burghers of fourteenth and fifteenth century France. The non-theatrical craftsman, with a few negligible exceptions, such as the popular feuilletonists in Alexandria or the minstrels of the populace in India or the *Spielmann* in mediaeval Ger-

many, was the product and mouthpiece of a leisure class, which filled its earthly span with religion, warfare, politics, learning and love. The crumbs of literature which fell from its table to the productive masses went unnoticed.

By the time of Dr. Johnson and d'Alembert the older economic relationships had undergone a deep transformation: the full effects of the commercial revolution were already felt, and before their deaths the industrial revolution was gradually beginning to gain momentum. The happy experience of Addison and Steele with the *Spectator* and the *Tatler* and of Edward Cave with the *Gentleman's Magazine* had proved to the satisfaction of even the most skeptical eighteenth century book publishers that there was a reading public eager for congenial literature. Under the stimulus of the popular revivalist movements, such as Wesleyanism, and of the insistence of democratic utilitarianism on popular education, a progressively larger section of the productive masses was drawn into the literary process. At the same time the dominant groups within the new nation states became involved in an increasingly complex economic system, which computed its values in terms of price.

The effect of these basic economic forces on the literary craftsman was twofold. The dominant social groups, absorbed in their daily responsibilities in the system of entrepreneurship, found little place in their immediate circle for the man of letters. Deprived thus of his vital contacts with the dynamic elements in the social process no less than of his leisure status, he turned either in a spirit of resignation to the fainéant remnants of a precapitalistic age or, if of a more realistic temperament, set out to orient himself more accurately in terms of the various levels represented by the enlarged reading public.

Although he had assumed a professional status on the periphery of the price system the author's sense of immediate contact with the other members of his profession decreased. The small literary circle of Augustan poets and critics was a self-contained, exclusive unit. Critical standards, based on intricate rules of composition and presupposing an intimate familiarity with the rather inaccessible texts of earlier masterpieces, closed the gates in the face of the overpresumptuous. The Horatian idealization of the poet as a civilizer, a being apart, akin to Cadmus, was perpetuated throughout the Renaissance and served even later to discourage the vulgar interloper. With the gradual release of individualism accompanying the break up of feudalism the task of the critical oligarchs became increasingly difficult, as can be gauged by the vehemence of Boileau and Dryden and Pope against the fumbling hangers on in the republic of letters. With each new stage in the spread of individualism the impossibility of the task became more manifest. The declining appeal of ecclesiastical and military careerism sent a growing number of recruits into literature, ill adjusted to their social system but unfitted also for their new profession. At the same time the implications of the newly proclaimed doctrine of the "career open to talents" were drawn by an ever mounting number of ambitious and penniless youths. With no organic group center around which to cluster writers followed the general drift to the cities, where they broke up into artificial groups bound together by the miseries of Grub Street or at a later date by the Bohemian atmosphere of the Parnasse cenacles.

The proliferation of literary and intellectual groups was accompanied by an unprecedented demand for printed edification and amusement. The older public ceremonies which hitherto had beguiled and as a rule edified the populace—religious rituals on the Acropolis and at Chartres, gladiatorial contests and circuses, festas and endless saints' days, mimes and miracle plays, tournaments and bear fights—were fast giving way to the industrious drabness of Manchester. While the middle class turned in ever increasing numbers to the mirror of literature in search of an idealized reflection of its virtues and ambitions, those in the smoky tenements sought in literature only a brief opiate from the day's drudgery. The majority of modern writers, like the majority of modern readers, have been drawn from the contented middle class. Through the medium of the novel author and reader, turning from kings and nobles, have peered into the everyday lives of their neighbors, gazed upon the pleasant face of nature, shared their ideals of love and earthly fame, discussed their problems of love and marriage. The success of the early novelists, notably Richardson and Jane Austen, soon established a mold which has required but little modification in its adaptation to the demands of large scale literary production. To the more determined of the standardized profession of letters have been accorded wealth and veneration, and to the less talented at least their daily bread.

The escape from this prevailing preoccupation with homely matters has been furnished by the literature of adventure and illicit romance, which lightens the drudgery looming in the shadow of Manchesterism. The children of those toilers who at an earlier stage found diversion and comfort in the exploits of Jacob and Gideon turned to the new supplies of adventure distilled from the lusts and crimes of an industrialized society or the lawless adventure of a frontier in process of exploitation. Reynold's penny romances of the 1830's, the paper covered volumes of Nick Carter and Jesse James, the pulp magazines of the subway age, have brought flashes of release to the millions who have preferred to forget their own lives.

Like the submerged group of readers, a small literary layer much nearer the apex of the social pyramid has sought escape in a variety of ways from middle class standardization. Shelley, Matthew Arnold, Flaubert, Ibsen, Shaw, the latest group of formalists—all these and many more have reviled the standards of Philistinism and of Philistine literature. The romantics sought escape in a neo-Prometheanism or mediaevalism or pantheism or revolutionary oratory; the Parnassians sought it in the religious literature of India and Persia and early Greece; the de Goncourts and their maladjusted French and English followers in the literature and art of the Orient; the symbolists in the nebulous melopoeia of delicate, half formed images; the formalists in the ferreting out of new verbal masses and rhythmical patterns; the transitionists by blasting the word itself.

This upper group has in the nature of things been the most articulate in rationalizing its pretensions and predilections. The modern conception of literature may be said to be in large part its handiwork. It has been openly suspicious of literary mass production and amused by the lower reaches of literary output. Against the modern traffic in books it has sought to set up standards based on literary tradition or aesthetic rationalism. Unconvinced by the utilitarian argument from numbers, it denies that "pushpin is as good as poetry" and measures its audience in terms of centuries rather than publisher's sales. The attempt of this self-conscious group to leaven the inert mass of functional readers by familiarizing them with laws of taste of a less ad hoc nature has not materialized. The dogmatic assurance of "Augustan" criticism, buttressed by the prestige of a functioning social group, finds in the modern period a few nostalgic exponents, but ex cathedra judgments, even of a Brunetière or an Eliot, have only a limited carrying power. For among the inalienable natural rights of the modern individual is that of knowing what he likes. The attempt of the impressionist critics to tell him why he likes it or why he should like something else more seemed for a time, in the hands of an Addison or a Hazlitt, to give promise of elevating the public taste. But the unpretentious, conversational tone of the impressionist critic soon came itself to be commercialized and vulgarized. The growing lists of the publishers on the one hand and the growing numbers of those who want to write on the other have resulted in the tremendous expansion of the group of literary intermediaries known as book reviewers. Ranging from esoteric literary reviews to boiler plate columns and to rural weeklies, the realm of criticism has come to display as violent cleavages as are found in the reading public and among the authors who try to anticipate its tastes. In an age of blurbs, literary teas, book clubs and Christmas trade publicity the critic's impressions of the adventures of his soul among masterpieces tend to gather irrelevant values; while the lamentations of the minority which still persists in thinking of the intrinsic values of literature grow proportionately fainter.

The dual problem of sociological criticism—the social conditioning of literary creation and the impact of literature on society—has received varying emphasis and neglect in the long history of critical exploration. Greek criticism was cut off from any real consideration of the creative process, either in social or psychological terms, by reason of its contempt for any non-Greek variant and its tendency to take its own body of literature for granted. When Aristotle formulated his doctrine of mimesis, or the imitation of nature, the Greek masterpieces were already in existence. The rules of literary composition, set forth in the *Poetics* and the *Rhetoric* and repeated with minor variations by the long succession of Aristotelian critics, were at the outset arrived at in large part by an inductive process of analyzing existing models. But once arrived at they were universalized, and in the hands of an intelligent literary craftsman these axioms of composition were deemed adequate to convert the world of nature into the realm of art. The intricacies

and problems of the intermediate personal process were minimized and glossed over. The major energies were directed to a classification of types of literature and the differentiation between faults and merits in composition. The tendency to ignore the processes of personal creativeness was emphasized by the fact that Greek literature was collective in inspiration and traditional in form, and that since his material lay in the tribal tradition the poet was merely the craftsman molding it into literary form by well attested rules.

The influence of the Aristotelian approach lay over western critical thought for two thousand years. Some of the later Hellenistic aestheticians, notably Longinus and the neo-Platonists, stressed imagination in the creative process and revolted against the sovereignty of overformal rules. But although its importance was revived by modern thought, the movement was at best a minor insurgency. In Rome, where the task of the critic was bound up with the profession of the teachers of rhetoric, the rules of composition became increasingly meticulous. But they were oriented primarily toward preparation for the public career. In the hands of a critic who was himself a literary craftsman, like Horace, the rules were fashioned into an *ars poetica* in which the factor of *ingenium* was taken for granted and forthwith dismissed. Neither in Horace nor in the numerous Horatians of Renaissance Italy and seventeenth century France was there any sustained interest in any portion of the literary process except the end product. The new interpretation given to the Aristotelian mimesis by certain Renaissance critics, such as Vossius, according to which the masterpieces of antiquity took the place of nature as the proper object of imitation, left even less reason for concern with the complexities of the creative process. The Atheno-Roman logic of *barbaroi*, reenforced by the thrill of the classical revival and the consciousness of succession to the ancient tradition, enabled the sixteenth century Italian critic to generalize and prescribe with the assurance of old. This critical absolutism persisted even into seventeenth century France, which conscious of its intellectual hegemony in Europe was persuaded that the mantle of Rome had settled with providential fitness on its shoulders. The deeper lying drives, the cultural and intellectual forces at once stimulating and conditioning the task of writing, remained outside the realm of exploration.

But the second aspect of sociological criticism—the impact of literature on society—was given rather extended attention. Plato wished to banish poetry utterly from the Republic because it could be intoxicating to its victims and interfere with the more serious pursuits of life. And without sharing Plato's passionate outburst against the poet the classical world agreed that literature had a marked social incidence. The poet was *morum doctor*, and the orthodox version of his social function is expressed in Horace's *delectando pariterque monendo*. The Achaean heroic type presented in Homer, combined with the more mature wisdom characterizing the gnomic poems of the Seven Sages, the odes of Pindar and the dramas of Sophocles, presented undoubtedly a pattern of self-reliance and moral restraint that may have been found useful to the stability of the Greek polities in periods of transition and disintegration; the hold that Euripides had on the imagination of the Hellenic world served something of the same function in the direction of political amity as Shakespeare is said to have served among English speaking countries; and the tory diatribes of Aristophanes against the individualism of Euripides as an important factor in the disintegration of the older tribalism are evidence of how the Greek mind was occupied with the social impact of literature. In other cultures similar instances may be cited—the attempt made in the *Bhagavadgita* to bolster the Indian caste system by propaganda stressing its justice and sanctity and directed to the farmer, the soldier, the shopkeeper; and Vergil's idealization of a farmer's life in a period of chaotic agrarian unsettlement as well as his intent to fashion a glorious heritage for an empire freshly welded out of dynastic struggle. The common element in most of these cases is the consciousness of the effectiveness of literature as a force making for order or revolt in a changing social organization or political system.

With the victory of Christianity a rigid moral and political instrumentalism—implicit, when it was not a conscious policy, in the new religious philosophy of life, and reacting against the decadence of Greco-Roman life in the empire—destroyed pagan literature where it could and placed its imprimatur only on what was edifying and expedient. The instrumentalism of an *ecclesia militans* was followed in due course by a diluted but oppressive moralism, finding its strongest expression in sixteenth century Catholicism and insurgent English Puritanism, which represented the extremes of moral revival

in the interests of religio-political struggle. And the endless harping on the moral beneficence of literature that is found in late Renaissance Italian criticism, along with the patient defense of literature by Sidney and the Elizabethan critics and by Congreve a century later, may be interpreted as a response to this pressure.

It is in eighteenth century critical thought that a distinct conception of the social conditioning of the literary process first emerges. The confluence of several appreciable forces, all working in the same direction, may serve as an explanation: the early environmentalism of the Renaissance and seventeenth century thinkers; the emergence of centralized nation states, building, and building upon, a feeling of nationality; the spread of literacy and literary effort; the growth of a middle class, emotionally bound to a native tongue and a native culture and skeptical of the fervor of the classical revival as embodying an aristocratic snobbishness. All these forces combined to produce a movement of literary criticism which threw its major emphasis on the organic unity of the national literature with the national culture. Wotton and Hume in England, Dubos and Condillac in France, Kant, Hamann and Herder in Germany, may be selected as exemplifying the variety of approaches to the problem. The movement took at first the form of a debate as to the relative merits of the "ancients" and the "moderns," and later the mediaevalist strain, represented in England by the writings of Hurd and the Wartons and in Germany by Gottsched's and Herder's continuation of an older mediaevalist strain, harked back to the glories of the national literary past. But neither the bitterness of the Battle of the Books nor the pressure to bolster the national pride against the Gallic pretensions to cultural hegemony is of primary significance: the chief importance of both lies in the fact that they suggested the outlines of a critical method which related the body of literature—of both a nation and a period—to the conditioning geographical, racial and political factors. From this followed the position, adumbrated in the Elizabethan period by Daniel's *Defence of Rhyme*, and given characteristic expression in Warburton's answer to Shaftesbury's criticism of Hebrew poetry: no literature, insisted Warburton, could be judged except as the critic placed himself in the position of the audience for which it was intended. The underlying assumption of this group was that a literature which had evolved organically out of the matrix of a society held more possibilities of greatness for that society than did an alien importation.

This early insurgent environmentalism was developed more scientifically in the nineteenth century and became the prevailing conception of literature. It was used to good effect by the romanticists in their struggle to displace the classicist position. Chateaubriand's mediaevalism had had considerable contemporary influence; and Madame de Stäel, who was conversant through Friedrich Schlegel with Herder's literary nationalism, published studies of the German temperament and literature in her *De la littérature considerée dans ses rapports avec les institutions sociales* (1800) and her *De l'Allemagne* (1813), which were received with acclaim and were widely imitated. Along with the even more brilliant outpourings of the creative romanticist poets and dramatists, they marked the overthrow of the long intrenched classical absolutism. Rousseau's dictum that the only absolute truth was that there was no absolute truth had by 1830 been transmuted into a generally accepted axiom. Romanticists such as Wordsworth and Hugo developed a critical interest in the creative process of the individual writer, for the study of which a path had been blazed by the sensationalist psychology of Locke, by the emphasis placed by Shaftesbury on the dynamic and emotional elements in the literary creative mind, by the speculations of Home in England and Baumgarten in Germany on the nature of the creative process—developed more systematically in Herder's analysis of *Idiotismus*—and by the vogue of individualism and sensibility ushered in by Sterne and Richardson. This interest, taking the form of the cult of the genius and emphasized to the exclusion of all other factors, combined eventually with the complete formalism of the "art for art" school. The environmentalist position, on the other hand, building on Darwinism and Comtism and on the sharpening of scientific method, was extended to a more precise analysis of the social forces conditioning literary creation. Its most characteristic expression is found in the famous trilogy of Taine, in which he classified the environmental influences under *race*, *milieu* and *moment*. Brunetière displays even more markedly the tendency of this later type of environmentalism to eventuate in a reassertion of superpersonal standards.

The emphasis of the scientific critics on broad environmental determinants and the preoccu-

pation of the more introspective of the romantic poets with the individual creative mind were accompanied by a third approach to the literary process. Although thoroughly conversant with the environmentalist position the democratic humanitarians and socialist utopians of 1830, reacting against the laissez faire indifference of the Benthamites, emphasized the role of literature in the task of fostering the spiritual and emotional welfare of the unprivileged masses. The sentimental humanitarianism which had begun in the eighteenth century and received a stimulus from the writings of a number of the romantic poets, as, for example, Shelley and the early Wordsworth, deeply colored the conception of literature voiced by Saint-Simon, Proudhon, Fourier and Comte in France, Kingsley and Ruskin in England and Bielinsky and Chernechevsky in Russia. This emphasis on the social role of the literary artist is essentially a perpetuation of the older classical and Renaissance attitude adapted to the social problems of an industrialized society.

In reaction against this exclusive concern with the civic functions of literature a group of younger writers headed by Gautier set out to shift the emphasis back to what it regarded as the essentials of literature. The various forms assumed by the art for art movement among the successors of Gautier, especially in France and England, sought to focus attention on the peculiar problems distinguishing the work of the literary craftsman from that of all other types of thinkers and writers. This led both to the cult of the genius and to formalism, which devoted itself exclusively to problems of literary technique. In both cases the pretensions of the scientific environmentalists to explain away literary masterpieces were repudiated. This anti-environmentalism has varied from the annoyance of Whistler to the reasoned skepticism of Pater and to Croce's emphasis on intuitive phantasy as the only genuine factor in the creative process.

Until recently these varying conceptions of literatures, which may be traced from Plato to Cocteau, have proceeded on the whole undisturbed by authoritarian intrusion. The victory of the Bolsheviks over the White armies in 1920 and the subsequent consolidation of the U.S.S.R. have brought the question of literature out of the realm of theoretical abstraction and converted intellectual polemics into revolutionary partisan warfare. As an insurgent movement Marxism directed its major efforts to the overthrow of bourgeois society according to the scientific system laid down by Marx and elaborated by Engels. The necessity of propagating the cardinal doctrine of the class struggle had directed attention to the potentialities of the written word as a revolutionary weapon, but the question of the origins and function of literature in its higher ranges was not a pressing one. Dialectical materialism in laying out systematically the materialistic foundations of the ideological superstructure developed the environmentalist position with marked precision; but Marx himself did not attempt to apply its methodology overrigidly to the masterpieces of literature. A devoted reader of Aeschylus and Shakespeare, he also found relaxation in contemporary bourgeois literature, especially in the works of Balzac, which he intended to criticize at his first leisure. He felt no hesitancy in emphasizing, in the appendix to *The Critique of Political Economy*, that "certain periods of highest development of art stand in no direct connection with the general development of society, nor with the material basis and skeleton structure of its organization." Later Marxian scholars, of the type of Labriola and Plekhanov, have also been inclined on the whole to emphasize that the dependence of literature and the arts on the underlying modes of production is less directly traceable than is the case with political and legal ideologies and institutions. Since even to the present day no systematic attempt has been made to subject the workings of the creative process itself to the methodology of dialectical materialism, the Marxian interpretation of literature has laid itself open to the same charge that Saint-Beuve brought against Taine's environmentalism—namely, that it tended to ignore the technical and psychological elements distinguishing the literary craftsman.

The October thrust to power basically altered the emphasis of Marxism; unlike Engels or Liebknecht, Lenin was confronted with the task of organizing a proletarian culture. Between the present and the ultimate goal of a classless society was to be a period of transition of indeterminable length. Unlike Trotzky, Lenin refused to conceive of this period as essentially a brief and uncultured interlude of blood and sweat. The deterministic implications of Marxism insured that the struggles of the immediate future would inevitably reflect themselves in a new culture, while the dialectical elements indicated that the fostering of culture, especially in the realm of the written word, would

forward the consolidation of proletarian power. In such a program the role of bourgeois literature became a consideration of state.

Although Lenin, like Marx, felt no hesitation in expressing his fondness for the bourgeois masterpieces of the past and even his preference for Pushkin over the revolutionary poet Maiakovski, the activities of the various heterodox literary groups carried over from the aesthetic circles of the late empire continued to bring to the fore the question of bourgeois literature. In the early period of military defense and consolidation little attention was paid to the "decadent bourgeois" groups which assembled in the cafés to discuss the ramifications of imagism and formalism. The attitude of patronizing tolerance toward them which persisted even after the cessation of civil war is typified in Trotzky's lecture to the formalists, wherein he attempted to orient their abstract views against the concreteness of dialectical materialism. Most of these schools, like so many of their counterparts in post-symbolistic bourgeois societies, were essentially one-man movements and died out naturally with the death of the leader; while in other cases the leaders of the asocial extremists found themselves gradually drawn from the poetic laboratory closer to the factory.

The problem of the bourgeois "fellow travelers" continued, however, to be a storm center. Since it was widely assumed that Marx and Lenin had established the fact that bourgeois literature was a reflection of bourgeois society, it followed that the writings of an ex-bourgeois group constituted a hindrance if not a danger to the carrying out of proletarian ideals and proletarian program. The struggles of such groups as the All Union Association of Proletarian Writers (V.A.P.P.), the *Na Postu* and the aggressive Proletcult of Bogdanov to set up a cultural dictatorship directed to the eradication of subversive bourgeois literature and art, took the form primarily of attacks on the "fellow travelers." In 1924 the government in order to put an end to introverted literary polemics, issued a series of formal resolutions repudiating the pretensions of any group to literary hegemony, laying down the broad principle of free competition of aesthetic ideas and recommending to the proletarian groups that they learn from the better trained bourgeois literary craftsmen the refinements of technique and at the same time inculcate them more zealously with the essentials of proletarian ideology.

The reversal during the 1926 crisis of the government's earlier position may be attributed to the impolitic behavior of the "fellow travelers" themselves. Convinced, like many engineers and intellectual experts of the period, that the persistence of the NEP was the herald of a return to the old order, the spokesmen of the right wing literary groups were heartened to express in literary forms their newly revived hopes. Confronted with what bore the marks of a major crisis the government retaliated by organic pressure which soon communicated itself through efficiently functioning Soviet channels not only to critical but to mass opinion. Auerbach, personifying the hitherto restrained rancor of the antibourgeois groups, became the literary man of the hour. The bourgeois suspects continued as editors of their literary magazines but unimpeachable proletarians were introduced as assistants. The books of the "fellow travelers" continued to be published, but the universal chorus of disapproval, ranging from critical journals to factory literary circles, drove the authors either to silence or to more unequivocal participation in proletarian programs.

The sense of increasing security, which mounted with the startling success of the Five Year Plan, and the growing indications of a more genuine proletarianization of the bourgeois literary group led on April 23, 1932, to an official resolution liquidating the V.A.P.P. and its affiliated branches which had persisted in their literal minded version of proletarian culture and literature. With the growing sense of well being, there has been manifested recently a general disposition to relax. As the second Five Year Plan draws nearer, there begins to appear even a tendency to suggest the dangers of hyperasceticism and exclusive preoccupation with superpersonal values. At a stage when some of the non-exploitational amenities of bourgeois life—love, romance, flowers, silk—find gracious apologists, the bogy of bourgeois literature is being gradually laid. Stalin like Marx finds relaxation in Shakespeare, whose works he recommends as correctives to the overprolific manufacturers of ill constructed social tracts.

The role of the Russian Revolution in bringing literary theory from the library and seminar to the public forum has extended to most of the larger countries of Europe and America. The proletarian movements have varied in strength, ranging from that of Germany through those of Austria and Hungary to those of the United States, France and England, where the goal of

the dictatorship of the proletariat seems as distant as it must have seemed to Engels. But even where the actual movement is weakest the widespread interest in the Five Year Plan and the growing hold of proletarian ideology on critical and intellectual circles have given a new orientation and note of actuality to the various conceptions of literature. Especially in those countries such as the United States and England where the methodology of historical materialism had not already become part of the climate of opinion, the possibilities of the so-called Marxist interpretation of literature have attracted not a few literary critics and historians.

The problem of the proper attitude for proletarian literary groups in these various countries toward "the fellow traveler" revolutionist writers who seek affiliation with them has been solved on the whole in essentially the same spirit as in Russia itself. The dangers from the ideologies of right wing socialist groups as represented by Kautsky and Vandervelde and of dissenting communist groups, such as Trotzky's, are of course much stronger and have been fully appreciated by the International Union of Revolutionary Writers. The criticisms heaped by the conference at Kharkov in 1930 on Henri Barbusse's journal *Monde* for opening its columns to ideological renegades are sufficient evidence of the unwavering attitude displayed toward any vital manifestation of heterodoxy. But almost as serious as right wing heresy from the point of view of the more intelligent leaders of proletarian literature is left wing sectarianism, which insists on closing the door tight against all would be revolutionary writers of bourgeois or petty bourgeois origins. The necessity of reeducating the revolutionary affiliates and of gradually eliminating false ideology is stressed as one of the primary responsibilities of the genuine proletarian writer groups. Outside of Russia the best organized groups of proletarian writers are to be found in Germany, Austria, Hungary and China, although the nicely balanced attitude displayed toward bourgeois revolutionary writers by the proletarian literary groups of Japan was especially commended at the Kharkov Conference, where plans were laid for extending the influence of the International Union of Revolutionary Writers to the backward colonial areas which were beginning to display increasing signs of a revolutionary activity. Although the United States played a comparatively insignificant part at the conference, the intervening two years of depression have swelled considerably the ranks of bourgeois writers sympathetic with the proletarian movement. In a number of cases the attitude displayed by members of this group toward the question of bourgeois literature has been more uncompromising than that of the less inexperienced Russian leaders. Moreover, in the ever growing literary skirmishing over the implications of class literature, the tendency to identify Marxianism with economic determinism has produced not a little confusion and disagreement as to the most valid conception of literature.

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See: LANGUAGE; WRITING; LITERACY AND ILLITERACY; PROPAGANDA; PRINTING AND PUBLISHING; COMMERCIALISM; CRITICISM, SOCIAL; THEATER; FOLKLORE; MYTH; ROMANTICISM; MEDIAEVALISM; MATERIALISM; NATURALISM; REALISM; MODERNISM; HUMANISM; CLASSICISM; DECADENCE; DETERMINISM; ENVIRONMENTALISM; FUNCTIONALISM; NATIONALISM; INDIVIDUALISM; CULTURE; INSTITUTION; TRADITION; INNOVATION; MORALS; CENSORSHIP; CLASS; FEUDALISM; CHIVALRY; ARISTOCRACY; MIDDLE CLASS; PROLETARIAT; CLASS STRUGGLE; WOMAN, POSITION IN SOCIETY.

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LITTLETON, SIR THOMAS DE (*c.* 1407–81), English jurist. Littleton was the son of a distinguished Worcestershire family. Little is known of his early life. In 1450, having already achieved distinction at the bar—he had been escheator and undersheriff of Worcestershire and recorder of Coventry—he became the first reader to the Inner Temple; in 1455 he was appointed king's serjeant. He seems to have taken no part in political struggles and was little disturbed by the changing fortunes of York and Lancaster. From 1466 until his death he was judge of the Court of Common Pleas.

Littleton's reputation rests chiefly upon his treatise on *Tenures*, one of the first books printed in London and the first and perhaps the most famous treatise on English law. This must have been written shortly before the close of his life, for it was published in 1481 or 1482. More than seventy editions eppeared before 1628, when Coke published his scarcely less famous *Commentary upon Littleton*, and about twenty subsequently; of Coke's commentary twenty-five editions appeared.

Littleton's *Tenures*, unlike the earlier treatises of Glanville and Bracton, is a purely English work, dealing only with the common law of England. It shows no trace of the influence of civil law codes or writers. It was the first attempt at a scientific classification of land rights and

gives a thorough description of English mediaeval land law before the recognition of equitable rights. The book became not only the foundation of the law of real property in England but also the textbook through which for almost two centuries students received their introduction to the law. Although Littleton refers to some reported cases to illustrate the principles which he lays down he works chiefly by means of typical, hypothetical cases. Exhibiting no ontological or philosophical curiosity, it is a book for lawyers only and as such is a superb performance, simple in style, orderly in arrangement and precise in expression.

W. R. VANCE

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LITTRÉ, MAXIMILIEN PAUL ÉMILE (1801–81), French philosopher, scholar and politician. Littré began to prepare for a medical career, then turned to the study of philology and linguistics. Of a deeply ingrained republican persuasion, he participated with the university youth in the revolution of 1830. The problem which his many sided interests presented was finally solved by his entry into political and scientific journalism. His most important productions as a writer were his works on the French language, particularly his *Histoire de la langue française* (2 vols., Paris 1862; new ed. 1863) and *Dictionnaire de la langue française* (4 vols. with supplement, Paris 1863–77). In social thought he is of significance as an organizer rather than as an innovator. About 1840 he entered into association with Auguste Comte and thereafter became Comte's most prolific and perhaps most distinguished French disciple, contributing greatly through his articles in the liberal paper *National* to the exposition and popularization of positivistic ideas. The form of positivism to which Littré adhered was that expounded in Comte's first great work, *Cours de philosophie positive*. After Comte became interested in the propagation of a religion of humanity Littré repudiated him and remained faithful to the original scientific principles of positivistic philosophy, for the dissemination of which he founded the *Revue de la philosophie positive* in 1857. On certain points Littré differed even from Comte's first phase. He accepted Comte's two fundamental laws, that of the three stages and of the evolution of the sciences in the order of decreasing generality. Lacking the profound mathematical training of his master he inclined, however, to view their operation as a biological process which advanced by slow, imperceptible transformations. In the history of civilization he accorded science a more important place than did Comte; but in the history of knowledge, while he embraced Comte's view of science as the final goal of intellectual progress, he believed that scientific problems must be clearly demarcated from those of metaphysics. As a writer on political subjects and as a moralist Littré was even further from Comte. His essential political tenets were liberalism and anticlericalism; and he occupied himself in later life with the highly practical problem of advocating a republican, lay, centralized government in France—the type of regime which the Third Republic was to realize. A rationalist in ethics, he held that the notion of justice, traceable to an innate respect for human equality and susceptible of unimpeachable logical demonstration, is the supreme principle regulating moral relations. The publication of his "Des origines organiques de la morale" (published in the *Revue de la philosophie positive*, 1870) and of the *Dictionnaire de médicine* (ed. by Littré and C. Robin, Paris 1855; by Littré alone, 1884) gave rise to charges of materialism. Monseigneur Dupanloup resigned from the French Academy upon Littré's entrance in 1871. In that year Littré was elected deputy from the Seine to the National Assembly, where he sat on the left. Through this position and through his writings he influenced the founders of the policies of the Third Republic, particularly Gambetta and Paul Bert, both of whom accepted positivism. The deep imprint of positivistic ideas, particularly with regard to scientific and ethical instruction, on the educational system inaugurated by the Third Republic and constructed by Bert in collaboration with Ferry and others shows Littré's influence, as the mark of post-Kantian ideas in the system can be traced to Charles Renouvier. No other thinker except Renouvier contributed so energetically as Littré to the shaping of the official philosophy of the Third Republic.

RENÉ HUBERT

Works: Littré's principal books on social subjects include: *Application de la philosophie positive au gouvernement des sociétés* (Paris 1850); *Conservation, révolution, et positivisme* (Paris 1852, 2nd ed. 1879); *Auguste Comte et la philosophie positive* (Paris 1863, 3rd ed. 1877); *La science au point de vue philosophique* (Paris 1873, 5th ed. 1884); *Études sur les barbares et le moyen âge* (Paris 1867, 3rd ed. 1874); *Fragments de philosophie positive*

et de sociologie contemporaine (Paris 1876); *De l'établissement de la Troisième République* (Paris 1880).

Consult: Caro, E. M., *M. Littré et le positivisme* (Paris 1883); Sainte-Beuve, C. A., *Notice sur M. Littré, sa vie et ses travaux* (Paris 1863); Ravaisson-Mollien, Félix, *La philosophie en France au XIX^e siècle* (5th ed. Paris 1904) p. 64–65, 92–96; Poey, André, *M. Littré et Auguste Comte* (2nd ed. Paris 1880); Robinet, J. F. E., *Le positivisme et M. Littré* (Paris 1881); Brennecke, Adolf, in *Deutsche Rundschau*, vol. xxxix (1884) 82–94.

LIVERPOOL, FIRST EARL OF, CHARLES JENKINSON (1727–1808), British statesman and monetary theorist. Liverpool's official and political future was determined by the fact that as a young man he became private secretary to Lord Bute. Thus he entered the company of the King's Friends, became an undersecretary of state in 1761, obtained a seat in the Commons and by ability as well as by influence climbed to many important offices, attaining the peerage as Lord Hawkesbury in 1786 and an earldom in 1796. When Bute retired from the Commons, Liverpool succeeded him as leader of the King's Friends. Under North he performed competent work as secretary at war (1778–82). Despite a certain odium in which he was held because of his reputed intimacy with the king he greatly influenced commercial policy under the younger Pitt. His thorough grasp of economic matters, reflected even in the fragmentary speeches of the *Parliamentary History*, made him Pitt's invaluable adviser; and the Irish Propositions, the French Treaty, the trade relations between the British colonies and the United States and Pitt's financial schemes were all in part fashioned by Liverpool's counsel. He was on the committee of the Privy Council which succeeded the old Board of Trade (1784–86) and in 1786 became president of a reconstituted Board of Trade and Plantations. In this office his dominant aim was to safeguard the shipping industry in the belief that despite the loss of the thirteen colonies England's power would be enhanced if she could retain the navigation of the New World. For this reason he opposed the abolition of the slave trade and radical changes in the navigation acts.

Liverpool's greatest contribution, however, was in currency reform. He was the leading advocate of gold monometallism, and it was mainly through his literary and personal efforts that the gold standard, which had already existed in England de facto, was given legislative recognition, first in the acts of 1774 which called for recoinage of gold coins and limitation of the legal tender of silver coins to payments not exceeding £25 and later in the act of 1798 which prohibited silver coinage; the law of 1816 largely reaffirmed the principles enunciated in preceding legislation. His *Treatise on the Coins of the Realm* (Oxford 1805) presents the most convincing argument for the gold standard; it was republished by the Bank of England (new ed. by G. W. Birch and H. R. Grenfell, London 1880) during the bimetallist controversy of the 1880's.

ALEXANDER BRADY

Other important works: *A Collection of All the Treaties of Peace, Alliance and Commerce between Great-Britain and Other Powers; 1648–1783*, 3 vols. (London 1785).

Consult: Lecky, W. E. H., *A History of England in the 18th Century*, 7 vols. (new ed. London 1892); Namier, Louis Bernstein, *The Structure of Politics at the Accession of George III*, 2 vols. (London 1929); Wraxall, N. W., *Posthumous Memoirs of His Own Time*, 3 vols. (2nd ed. London 1836); Kalkmann, Philipp, *Englands Übergang zur Goldwährung im achtzentenjahrhundert*, Strasbourg, Staatswissenschaftlichen Seminar, Abhandlungen, vol. xv (Strasbourg 1895); Mannequin, T., in *Journal des économistes*, vol. xv (1881) 332–49; Schneider, John P., *Die Goldwährungs-Autoritäten* (Bremen 1881) p. 6–20.

LIVESTOCK INDUSTRY. Because of their importance to man cattle, sheep and hogs have constituted a vital factor in all civilizations. In antiquity they were an element not only in the food supply but also in artistic and religious activities. Today the American or European husbandman engages in the breeding, feeding and marketing of animals whose forbears were treated as gods or mythological heroes by the peoples of ancient civilizations. Up to recent times the livestock industry was definitely of a primitive nature. It was nomadic and pastoral and any commerce which resulted from it was never on more than an intracommunity basis. Animals were not bred carefully; although they were slaughtered for their meat they were utilized equally for their hides and wool, tallow and bones.

The livestock industry of the modern world is a direct result of the growth of towns, the industrial revolution and the oversea expansion of the late eighteenth and the nineteenth century. These changes in the economic life of the West made necessary the development of additional food resources, and new capital appeared to provide the means for the expansion of the livestock industry on more or less systematic lines in the great new lands of the Americas, Australia, New Zealand and South Africa.

Within these areas in the latter part of the nineteenth century there were a number of in-

fluences at work to speed the process of growth. The pioneer settlers leaving behind them the towns and villages of the seaboard penetrated into the great plains regions to carve out new homes and to engage in commercial agricultural enterprises. Here they found the conditions most suitable for the development of a livestock industry: corn and other grains sufficient to fatten livestock could be grown on the grasslands; in the range country there was ideal pasturage for millions of head of cattle and sheep. The entry of the railroads into the pioneer fringes provided transportation which linked the stock farms or ranches with the markets. The invention of refrigeration made possible the storage of meat supplies at centers after slaughter as well as the year round operation of packing plants; the latter in turn created a continuous market for the producer. The appearance of the modern canning industry permitted the utilization of livestock products in canned foods which could be kept indefinitely without deterioration. With the perfection of an adequate financing mechanism there emerged the large scale livestock industry with which the modern world is familiar. The result of all these factors has been that the peoples of the West, particularly those of the new plains countries and the industrialized nations of western Europe, have become consumers of meat stuffs in large quantities and that consequently beef, veal, mutton, lamb and pork have become significant in international trade.

Cattle. Beef cattle are the bulwark of agriculture. On the ranges and pampas they convert vast quantities of grass and forage into high grade meat, the value of which is greater than that of any other commodity which might be produced from the same raw material. Beef cattle fit admirably into the modern agricultural scheme: they require little care; they are not easily carried off by disease; and their proportionate consumption of cheap roughages and high priced concentrates is admirably suited to the crop rotations of ordinary farms. Besides their manure makes possible the retention and renewal of the richness and mellowness of the soil. Almost one tenth of the gross farm income of the United States comes from the sale of cattle, which at the peak of prosperity in 1929 amounted to about one billion dollars. This was almost as great as the income from hogs and over six times the income from sheep.

The estimated world population of cattle is in the neighborhood of 600,000,000 head, which is as large as the total for sheep and two and one half times that for hogs. In commercial importance North and South America are the outstanding cattle regions of the world, although Asia, where cattle are comparatively unimportant for world trade, has a cattle population greater than that of North and South America combined. The following are the figures for the principal cattle countries with the year of census or estimate in parentheses: India (1928), 184,555,000; United States (1930), 57,978,000; Asiatic and European Russia (1930), 53,800,000; Argentina (1930), 32,212,000; Germany (1930), 18,033,000; Australia (1929), 11,301,000. Although the cattle of the United States number only one tenth of the world's supply, this country produces more beef than any other nation. This is largely due to the fact that the cattle of the United States are raised almost entirely for their meat; moreover by the use of pure bred sires beef production per unit of breeding stock has been increased to a point reached in but few other countries.

The tendency to greater density of cattle population in certain areas than in others is due to feed and climatic conditions and to the existence of a variety of racial customs regarding the consumption of beef and dairy products. A supply of proper feed is one of the limiting factors having a bearing on the density of cattle population. Thus in Argentina the production of cattle has developed rapidly since 1900, in considerable measure because of the discovery that animals could be stocked easily on the rich natural forage grasses of the country. Young steers are raised on grass until they are two to two and one half years old and are then removed to special alfalfa pastures for a fattening period of six months. Similarly, in the western plains area of the United States pastures have been found especially suitable for the grazing of cattle; while in the American corn belt a relatively dense population has been established as a result of the large supply of grain available for fattening purposes. In fact nearly 30 percent of all the cattle in the United States are to be found in the seven corn belt states of Ohio, Indiana, Illinois, Iowa, Missouri, Nebraska and South Dakota. There are also considerable numbers of beef cattle in the sugar beet and sugar cane regions of the United States, where these feeds have also demonstrated their suitability. While cattle may be found in both cold and hot regions they thrive best in the temperate zones.

In the United States cattle were introduced

into Florida, the lower Mississippi valley and the southwest by the Spanish and into the Atlantic coast section by the English and the Dutch. After considerable expansion in Virginia and the Carolinas cattle production was pushed out by cotton. Since the beginning of the nineteenth century cattle raising has constantly moved toward the west, seeking the areas of cheapest production. The early nineteenth century agrarian migration started cattle grazing in the Ohio valley, and cattle were driven over the Alleghenies to eastern markets. As corn production increased, this fattening area developed and cattle breeding was centered across the Missouri River. After the Civil War and during the decades of the 1870's and 1880's a scarcity of cattle in the north, due to the growth of the industrial population, and a surplus of cattle in Texas led to the driving of great herds north along what came to be a series of famous cattle trails; the era of the range cow country was thus inaugurated. As the railroads pushed west the cattle were driven to the termini, grazing as they went, and shipped east either for fattening in the corn belt or for slaughter in the packing plants of Chicago and Kansas City.

From 1870 to 1905 cattle ranching underwent a gradual metamorphosis. It was during this period that the western cattle industry was in its most picturesque phase. Covering a vast area which included the states of Texas, Oklahoma, Kansas, Nebraska, Wyoming, Montana, the Dakotas, Colorado and New Mexico; sparsely settled, ruled over by a hard riding and frequently lawless cowboy clan; a country of limitless plains and mighty rivers and stocked with wild game, western United States was exactly the place where great herds could roam with perfect freedom. Ranches not infrequently possessed as many as 80,000 head of cattle. Of the many customs that came to be associated with the industry on the open range the spring and fall round ups were the most interesting. The spring round up, lasting several weeks, was for the purpose of gathering together all the cattle for their enumeration, identification and distribution; the calves were branded and castrated; the mature steers were separated from the rest of the herd and moved to good fattening pastures until the fall. When the steers were between four and six years old they were trailed out and driven to the railroad termini.

Cattle thus existed on grass during both summer and winter. During the summer drought often played havoc with the herds; in winter storms were the chief danger, for the cattle would then drift for miles in the snow and die by the thousands. It was not unusual for one fourth and sometimes one half of the herds to perish in this fashion. Losses from disease, from theft (or "rustling," as it was called) and from attacks by wild animals were also heavy.

This great and haphazard business of cattle raising, as it was carried on in the 1880's particularly, had all the marks of impermanence. Beginning with the second half of the decade a change began to manifest itself; following the terrible winter of 1887 the cattle boom definitely collapsed. The ranges had become overstocked as a result of the entry of great numbers of inexperienced persons into the industry. English and Scottish investors led on by oversanguine promoters had poured huge sums into the region to capitalize new ranching ventures. Quarantine laws passed by a number of western and central states prevented the free movement of the steers on the range; similar restrictions on the part of foreign governments cut sharply into the oversea demand for the plains cattle. The steady encroachment of homesteaders and sheep herders upon the open grazing lands and the resultant fencing of the range limited the cattlemen's field of operations. Inadequate credit facilities made the situation more difficult and the cattlemen, unable to withstand all these forces, were compelled to bow before the new conditions.

Since the early years of the twentieth century the cattle industry has undergone profound economic changes. The rising costs of land and fencing, higher freight rates and heavier taxes and capital charges have compelled the introduction of more efficient methods in the production of cattle on the range. To insure a water supply wells have been sunk, reservoirs built and windmills and gas engines installed. The use of pure bred and registered bulls has improved the quality of the herds. Finally, the industry has become definitely specialized with, broadly speaking, the following four general divisions: the maintenance of breeding herds which produce the calves; the production of stockers which are raised on the range and then shipped to the corn belt for finishing on grain; the fattening of these so-called feeders by farmers of the corn belt; the production of grass fed cattle on the ranges.

There are three systems in common use in the United States for the handling of these beef bred herds. Under the "straight beef" system the steers are grown out as cheaply as possible.

This method is adapted to regions where pasturage is plentiful and inexpensive, as in the United States, where it is the most widely practised form of beef production. Under the "dual purpose" system the cows are milked and the calves are raised on skimmed milk and supplemental feeds. This method is to be found most frequently in the general farming states. The "baby beef" system is a highly specialized method particularly adapted to the corn belt, where there exist both a good supply of feeds for fattening and ample pasture for the summer maintenance of the breeding cows with their calves. In these operations cattle growers naturally need the assistance of financial credits. In the United States particularly there has been developed a distinct agriculture credit mechanism having characteristics peculiar to the industry (*see* CATTLE LOANS).

The general methods of marketing cattle have shown little change in the past thirty or forty years. The great majority of the cattle marketed are usually billed direct by the owner, individual shipper or cooperative shipping association to a livestock commission firm located at a central livestock market. Upon their arrival the commission firm sorts the cattle and sells them to the slaughterer or speculator. There are, however, several other modern methods of marketing, of which the most important are: the direct sale to country drover for shipment to central market; shipment to central market through cooperative associations; shipment to central market direct; direct marketing to local butchers; direct sale either to a packer buyer or a speculator in the country or on the range to cooperative associations or on mail orders. Since the World War there has been a great increase in the numbers of cattle marketed through cooperative associations of livestock producers and through direct buying on the part of meat packers.

Sheep. Sheep raising has always been one of the world's chief pioneer enterprises. More than 600,000,000 sheep are distributed throughout the six land areas, the latest sheep populations for the leading countries being as follows: Australia (1930), 106,117,000; Asiatic and European Russia (1930), 100,600,000; United States (1930), 50,503,000; Union of South Africa (1930), 49,240,000; Argentina (1930), 44,413,000; India (1928), 35,506,000; China (1929), 35,000,000; New Zealand (1930), 30,841,000; United Kingdom (1930), 24,743,000; Spain (1929), 19,950,000. Within the past generation the number of sheep has decreased in Argentina and the United Kingdom and increased in Australia, New Zealand and the Union of South Africa; there has been no significant change in the sheep population of the United States since 1900.

The distribution of sheep is materially influenced by the two general agricultural conditions of range and farm production and the two marketing conditions of the demand for wool and the demand for mutton and lamb. Of the ten leading sheep nations cited above Australia, Russia, the United States, the Union of South Africa, Argentina and New Zealand represent newly settled regions in most of which sheep production is still on the extensive or range basis; in China, India and the United Kingdom production is on a farm flock basis, where the flock is simply one element in the farm economy. Range production still persists in parts of Spain and in Hungary, while in the rest of Europe the farm flock method is generally common. Countries situated farthest from the world population centers emphasize the growing of wool because of its low transportation costs and its nonperishability. On the other hand, countries close to densely settled regions emphasize mutton and lamb production. Thus the largest volume of high grade wools comes from Australia and New Zealand, while the best quality carcasses are produced in the United Kingdom. In the United States the farm flocks in the corn belt and in the eastern and southern states carry largely mutton blood, while range flocks are chiefly of wool breeding.

Sheep were introduced into the American colonies at an early date and until 1850 were kept largely for their wool. During most of the nineteenth century because of the expanding needs of the New England textile mills the industry remained on a wool basis; and the number of western sheep, which were grown for this purpose, increased greatly. This was true particularly from 1870 to 1900. On the other hand, in the east the appearance of large manufacturing populations created a demand for mutton, with the result that sheep were grown for meat.

Range sheep, particularly in the southwest, were of low quality although they possessed traits that made it possible for them to survive in periods of long drought. On the northeastern edge of the range, in eastern Montana and Wyoming and in the Dakotas, the lambs could be stocked on the luxuriant grass and sent east as

feeders. The western sheep, very much like the range cattle, were run in large bands on the open public domain throughout the year. The industry was almost entirely in a pastoral stage; there was no investment in land or buildings; and the only capital outlays required were a camp outfit for the herder, which cost from $200 to $400, and the sheep, which were worth $2 a head.

Like the cattle raisers the sheep raisers began to feel the pressure of range constriction on their industry and found it imperative to buy or lease lands in the grazing areas. In some cases this meant the acquisition of a sufficient number of small holdings in order to control watering places; in others it implied the purchase or lease of the greater part of the range. But the range operators had to give up the struggle and recent years have seen a steady reduction of their flocks. Today range sheep are to be found in the winter in the desert lands where water is available from the melting snow; in the summer they graze in the mountain regions.

Because of the increase in operating expenses the raising of sheep for wool alone has become unprofitable. The growing demand for mutton and wool, however, has made it possible for range operators to change from a strictly wool basis to one including lamb and mutton. As a result there has been developed a type of ewe capable of producing a good market lamb and a readily salable grade of wool. Another modern development is the practise of marketing at a younger age. This has been stimulated by increased costs of production and a greater public demand for lamb in place of mutton. Today the sheep industry is made up of these three divisions: the growing of sheep for wool; lamb production; and the fattening of lambs.

The financing of sheep operations differs only in detail from the financing of cattle. Sheep as security for loans are not regarded with the same favor, because the loss from weather and the depredations of wild animals is likely to be greater. There are, however, two favorable factors in the case of sheep: their early maturity and marketability and the income from the spring wool clip. Sheep credits come as a rule from commercial banks, wool warehouse companies and the livestock loan companies, some of which make a specialty of sheep loans. The usual credit is from two thirds to three fourths of the value of the flock. Up to 1923 credit facilities were adapted to the needs of the feeder or finisher rather than to those of the grower. But with the passage of the Agricultural Credits Act, establishing Federal Intermediate Credit Banks and authorizing the formation of privately financed national agricultural credit corporations, the financial requirements of the rancher and livestock man began to be served more adequately.

Since the World War there have been two periods of heavy sheep marketing during the year: the months of May and June, when the native lambs weaned fat from their mothers are shipped; and the months of August, September and October, when the range lambs appear. This is a clear break with earlier practise. Before 1900 the meat packing industry was not organized to handle fresh mutton and lamb in the summer, nor was there a considerable consumer demand for these products. But the seasonal cycle of sheep marketing has been greatly modified by refrigeration. Of the total receipts of sheep in the United States approximately 75 percent are marketed at the public stockyards of the country; the concentration of slaughter is at four of these markets: Chicago, Kansas City, Omaha and Jersey City.

Hogs. Hogs constitute one of the most important sources of meat for human consumption and figure prominently in a proper agricultural economy. The hog is a highly efficient feeding machine: it is a user of foods unfit for man; it requires less grain per pound of meat than any other animal; and most of its carcass can be prepared as cured meat. It also helps maintain the fertility of the soil and is responsible for better farming practise because of the necessity for seasonal rotation of leguminous or nitrogenous pasture crops. The raising of hogs is easily within reach of every farmer because of their rapid multiplication and early maturity and because of the small capital investment required for their production. The amount of corn marketed in the United States in the form of hogs is in the neighborhood of 40 percent.

The world population of hogs is approximately 260,000,000. The leading producers are: China (average 1909–13), 76,819,000; United States (1930), 53,238,000; Germany (1930), 19,944,000; Brazil (average 1921–25), 16,169,000; Asiatic and European Russia (1930), 13,200,000. There are three types of agriculture in which hog raising plays an outstanding part. The first of these is corn growing, particularly when the crop becomes more important as a hog feed than a grain for human consumption. Hogs are therefore to be found in great numbers in the world's three great corn belts—central United States,

the La Plata region of South America and the Danube basin of southeastern Europe—where there has been developed a special type of hog which will convert the grain into pork and lard in the cheapest way possible. This is the so-called lard hog, a class which includes most American swine. The second type of agriculture involving hog raising is associated with the dairy industry, where hogs are grown extensively in order to utilize such by-products as skim milk, buttermilk and whey. The use for feed of these by-products in conjunction with small grains is common in the west north central states of the United States and in Canada, Ireland, Denmark, Holland, Sweden and Latvia; the type of swine produced on such a diet is the so-called lean, or bacon, hog. Potato growing, the third of these main types of agriculture, is predominant in Germany and Poland. In countries other than those mentioned in this paragraph the raising of hogs for commercial purposes is unimportant, although considerable numbers may be fattened for home slaughter on refuse from the kitchen garden and field. The hog production of the American cotton belt states, of the countries of southern Europe and of China is of this nature. Hog raising is insignificant in north Africa and southwestern Asia, because Moslem religious practise bars the use of swine for food.

The early Spanish explorers brought hogs to the gulf coast of the United States and the English settlers introduced them into the New England colonies and Virginia. Following the War of Independence the settlement of the Ohio valley led to the establishment of pork packing centers at the river towns, the chief of which, Cincinnati, became familiarly known as "Porkpolis." Artificial refrigeration was unknown and the packing season was limited to the winter months, when fresh pork was made available for city consumption. The continuance of the westward movement was responsible for the rise of Chicago as the leading hog market in the middle west; not long afterward markets sprang up along the Missouri River to take care of the hog supply from the farms in the western plain country. The advent of refrigeration in the 1870's released pork production from its seasonal dependence and insured to the consumer a constant supply of fresh meat and to the producer a ready market at all times of the year. The so-called razor backed hog, tall and long bodied with a long head and long ears, familiar to the America of the early nineteenth century, was a far different animal from the improved type of lard hog of modern times, which has been produced by a process of crossing pure bred boars with mongrel sows.

Since 1900 hog production in the United States has remained centralized in the corn belt. Because hogs are used so largely to convert corn into pork, the hog profit on the production side depends upon the existence of a proper relation between the prices of the two commodities. This has been called the corn-hog price ratio and for a number of years 11.67 bushels of Number 2 corn were equal in value to 100 pounds of hog on the Chicago market. This relation between hog and corn prices has produced the so-called hog cycle, of four or five years' duration, during which production has gone through a regular round of expansion and contraction. As Larmer (*Financing the Livestock Industry*, p. 39–40) has described it: "Breeding at any given time is determined by the profit made from hogs during the preceding year . . . about one and a half years after hog prices touch their peak in relationship to corn prices, hog breeding reaches a maximum. This produces a surplus of hogs a year or more later. . . . Breeding, however, does not reach a low point until some time after the hog-corn price ratio has begun to rise again. . . . The relatively short swing of the whole cycle is due to the fact that the volume of hog production can be accelerated very rapidly. . . . Contrasted with cattle, hogs are bred young and reproduce before they are one year old. This is made possible by a gestation period of only 110 days. Moreover . . . hogs produce litters averaging six to eight pigs, and through careful feeding a sow may produce successfully two litters of pigs each year."

Two other factors, both of which are peculiar to the industry, influence hog prices: the existence of a large export surplus and the fact that a considerable portion of the annual product goes into storage. Changes in foreign markets are naturally bound to affect domestic hog prices. Again, because only 60 percent of the hog crop is marketed in the six months following every November, cold storage is necessary for the remainder. The meat packer is therefore called upon to act as the risk carrier while he takes care of the storage function from a time of plenty to one of deficiency.

Fully 80 percent of the hogs marketed in the United States pass through the public stockyards, the largest of which are located in the corn belt. The five principal hog markets are at Chicago, East St. Louis, Omaha, Kansas City

and Indianapolis. The United States Department of Agriculture lists the following as being the most important present day methods of marketing hogs: (1) producer shipments, including shipments to central markets, direct sale to packers and slaughter and sale of products by farmers; (2) local sale to the country drover or buyer, to the packer buyer and to the local butcher; (3) cooperative marketing through shipping associations and through auction sales.

More than half the hogs marketed in the United States are sold by the producer in the country, the rural buyer being the most important single marketing agency at work here. His strength has been based on his ability and willingness to buy small lots, to pay cash and to assume the entire risk. The recent appearance of the cooperative shipping association, however, has begun to cut seriously into the country buyers' activities, because these groups are also willing to buy small lots and at a lower cost. Because of these apparent advantages of cooperative shipping the cooperative marketing of hogs is increasing.

The prospects for the livestock industry throughout the world are bound up with the future of the food supply. There are many factors to be considered, a large number of which cannot be estimated statistically. It is certain, however, as R. J. McFall points out (*The World's Meat*), that the livestock industry will expand and consolidate on the basis of increased efficiency, which is necessary not only in production but also in the marketing process. Those who state that meat is seriously decreasing in importance as a food have overlooked the fact that there has been increased consumption in Europe during the past century in spite of the fact that meat was growing more costly than grains. It is unlikely that sheep production will continue to be confined solely to the pioneer fringe. Hog production may be expanded in certain areas of South America, Africa and southeastern Europe, while with the increase in dairying there will probably be an expansion of hog raising as a subsidiary industry. The production of beef will in all likelihood become more closely linked with general farming and with dairying. Much land which is today fit only for pasturage can be made more profitable and used for breeding herds. In the most highly cultivated areas it is likely that the less efficient types of livestock will give way to the more efficient. More intensive animal husbandry may require more labor per unit. The future of the livestock industry is dependent not so much upon some changing fashion in human diet as upon a process of readjustment to the economic changes which are rapidly forcing all human activities to a new and lower price level. The rewards of the future will go to the most scientifically operated food industry.

RUDOLF A. CLEMEN

See: FOOD SUPPLY; STOCK BREEDING; CATTLE LOANS; CROP AND LIVESTOCK REPORTING; MEAT PACKING AND SLAUGHTERING; DAIRY INDUSTRY; WOOL; AGRICULTURE; GRAINS; DOMESTICATION.

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LIVINGSTON, EDWARD (1764–1836), American jurist, diplomat and statesman. After successful practise at the bar and three terms in Congress, in 1801 Livingston was appointed mayor of New York and federal district attorney. He reformed the rules of procedure of the mayor's court and published in 1803 a volume of opinions delivered therein. Livingston removed to New Orleans in 1804. His fame as a jurist rests largely upon his elaborate penal code, which foreshadowed nearly every reform in penology in the last half century. Sir Henry Maine called him "the first legal genius of modern times." After six years in the House of Representatives and two in the Senate Livingston became in 1831 secretary of state under Jackson. He wrote Jackson's nullification proclamation and conducted important negotiations concerning the Maine boundary and the young Latin American nations. From 1833 to 1835 he served as minister to France. Charged to secure payment of the American spoliation claims, Livingston found the French authorities intransigent but conducted the negotiations with dignity and ability until convinced that the effort was futile.

MILLEDGE L. BONHAM, JR.

Important works: *Judicial Opinions Delivered in the Mayor's Court of the City of New York* (New York 1803); *A System of Penal Law for the State of Louisiana* (Philadelphia 1833); *Complete Works on Criminal Jurisprudence*, 2 vols. (New York 1873).

Consult: Hunt, C. H., *Life of Edward Livingston* (New York 1864); Rawle, Francis, "Edward Livingston" in *American Secretaries of State and Their Diplomacy*, ed. by S. F. Bemis, vol. iv (New York 1928) p. 205–63; Smith, Eugene, "Edward Livingston and the Louisiana Codes" in *Columbia Law Review*, vol. ii (1902) 24–36; Bonham, M. L., Jr., "A Forgotten American Statesman" in *American Mercury*, vol. ii (1924) 493–500.

LIVINGSTON, ROBERT R. (1746–1813), American jurist, statesman and scientist. Livingston was one of the drafters of the Declaration of Independence and chairman of the committee which drafted the first constitution of New York. In France and America he fostered experiments in steam navigation, contributed largely to Fulton's success and invented a steam engine. He introduced merino sheep into America, studied breeding and popularized gypsum as a fertilizer. Chancellor of New York from 1777 to 1801, he organized his court, formulated its procedure and by his decisions and rulings laid the foundations for the equity jurisprudence of that state. First federal secretary for foreign affairs from 1781 to 1783, he organized the department well, conducted it skilfully and directed the peace negotiations, thus preparing the way for the federal Department of State. In the New York Convention of 1788 he secured the passage of a resolution that no vote should be taken upon any part of the federal constitution until the whole had been considered, thereby preventing its defeat by the concentration of the opposition upon the most unpopular features. As minister to France from 1801 to 1804 he was instructed by Jefferson to purchase New Orleans. He was offered the whole of Louisiana, and as a result of negotiations during the time he was awaiting the necessary powers he secured the territory for the price of 80,000,000 francs; when Monroe arrived with the necessary authority, the treaty was ready for signing.

MILLEDGE L. BONHAM, JR.

Important works: *Essay on Sheep* (New York 1809, 2nd ed. 1810); numerous letters and essays upon agriculture and industry in Society for the Promotion of Useful Arts in the State of New York, *Transactions*, vols. i–ii (Albany 1801–07).

Consult: Bonham, M. L., Jr., "Robert R. Livingston" in *American Secretaries of State and Their Diplomacy*, ed. by S. F. Bemis, vol. i (New York 1927) p. 113–89; Delafield, J. L., "Chancellor Robert R. Livingston" in American Scenic and Historic Preservation Society, *Annual Report*, no. xvi (Albany 1911) p. 311–30.

LIVINGSTONE, DAVID (1813–73), British missionary and explorer. Livingstone was sent out to Africa in 1840 by the London Missionary Society. When in 1851 he discovered that the Arab slave trade was spreading far into central Africa and blighting the prospects of missionary effort and all other civilizing work, he became convinced that this "open, running sore of the world" could be healed and the civilization of mid-Africa promoted only by Europeans present on the spot. Henceforward he persistently advocated a policy of commerce, colonization and Christianity. His historic journey across the continent (1854–56) and his Zambesi expedition (1858–64), which discovered Nyasaland, were undertaken with the purpose of finding a practicable route for colonists and traders into the interior. His search for the sources of the Nile (1866–73) was also prompted by the idea that geographic knowledge was a necessary prelude to commerce and colonization. He returned to Britain in 1856–57 and again in 1864. On both occasions his simple personality, his speeches and writings together with the fame of his exploits aroused public interest in the campaign against the slave trade and thus determined to

a considerable extent the character of the British attitude toward central and east Africa. Largely as a result of the deep impression he made on public opinion the British government was stimulated to secure in 1873 a treaty from the sultan of Zanzibar prohibiting all export of slaves and closing all public slave markets throughout the latter's dominions. The settlement of missionaries and traders in Nyasaland (1875–80) followed by the establishment there of a British protectorate was the direct outcome of his doctrine. The pursuit of the slave traders inland was one of the primary motives for the occupation and acquisition of British East Africa (Kenya and Uganda) which began in 1890. Only Cecil Rhodes has influenced British policy in Africa to as great an extent as Livingstone. It may be said that the best features of British administration from the Sudan to the Zambesi have been inspired largely by his idealistic attitude toward the African people.

R. COUPLAND

Works: *Missionary Travels and Researches in South Africa, Including a Sketch of Sixteen Years' Residence in the Interior of Africa* (London 1857, new ed. 1899); in collaboration with his brother Charles, with notes by F. S. Arnot, *Narrative of an Expedition to the Zambesi and Its Tributaries; and of the Discovery of the Lakes Shirwa and Nyassa, 1858–1864* (London 1865); *The Last Journals of David Livingstone in Central Africa, from 1865 to His Death . . .*, ed. by H. Waller, 2 vols. (London 1874).

Consult: Blaikie, William Garden, *The Personal Life of David Livingstone* (London 1880, 6th ed. 1910); Campbell, Reginald John, *Livingstone* (London 1929); Coupland, Reginald, *Kirk on the Zambesi, a Chapter of African History* (Oxford 1928); Johnston, H. H., *A History of the Colonization of Africa by Alien Races*, Cambridge Historical series (rev. ed. Cambridge, Eng. 1913); Smuts, Jan Christiaan, "Livingstone and After" in his *Africa and Some World Problems* (Oxford 1930) ch. i; Moir, Frederick Lewis Maitland, *After Livingstone* (London 1924); Gregory, J. W., "Livingstone as an Explorer; an Appreciation" in *Scottish Geographical Magazine*, vol. xxix (1913) 225–42.

LIVY (Titus Livius) (59 B.C.–17 A.D.), Roman historian. Born at Padua Livy passed his life almost entirely at Rome, where, averse to a public career, he devoted himself to study. Although a moderate republican he was a friend of Augustus. Among his productions were philosophical and rhetorical works of popular character, now lost. His principal work, consisting of 142 books, is the history of Rome, *Ab urbe condita*, extending from the origins of the city (753 B.C. according to Varro) to the death of Drusus in 9 B.C. It was probably interrupted by the author's death. Thirty-five books are now extant; the first ten go almost to the end of the Third Samnite War in 293 B.C. and the twenty-first to the forty-fifth extend from 218 B.C. to 167 B.C.; that is, from the beginning of the Second Punic War to the end of the Third Macedonian War. The remainder are known to us only as brief summaries.

Livy is famous among the ancients for his love of truth. The part of his history that has been preserved is not, however, that which best testifies to his worth as a historian. He never made direct use of documents nor did he always apply criticism to the written sources upon which he based his work. The Roman annalists whom he follows (as Valerius Antias and Licinius Macer) are in general among the later and less truthful. His Greek source, Polybius, however, whom he follows for the history of the struggle between Greeks and Romans, is of greatest value. He lacked concrete vision of the development of Roman power, topographical knowledge that would render his accounts of wars and battles comprehensible and a thorough knowledge of ancient Roman public law. His worth is in his style and in the clarity of his narrative, which make his work an epic of Roman glories, the more effective since they are combined with a stirring and almost fearful perception of the decadence of his time.

In antiquity Livy's fame was very great, even though his work was current chiefly in larger or smaller compendia; in the Middle Ages he was celebrated by Dante as "Livius who does not err"; in modern times there has taken place a strong reaction, beginning even before Niebuhr, against the authenticity of his statements. Although these have been necessarily submitted to severe criticism, his work will nevertheless always remain of great importance as a source of ancient Roman history and as suggestive testimony of the ancient grandeur of Rome.

GAETANO DE SANCTIS

Works: *Ab urbe condita*, ed. by Wilhelm Weissenborn, H. J. Müller, and Otto Rossbach, 10 vols. (2nd–10th ed. Berlin 1880–1924); *Titi Livi Ab urbe condita*, ed. by R. S. Conway and W. C. F. Walters, Scriptorum Classicorum Bibliotheca Oxoniensis, vols. i–iii (Oxford 1914–29); *Livy*, original Latin and translation by B. O. Foster, Loeb Classical Library, vols. i–v (London 1919–29).

Consult: Schanz, Martin von, *Geschichte der römischen Litteratur*, 4 vols. (3rd ed. Munich 1907–20) vol. ii, pt. i, p. 417–43; Taine, H., *Essai sur Tite Live* (5th ed. Paris 1888); Soltau, W., *Livius Geschichtswerk* (Leipsic 1897); Nissen, H., *Kritische Untersuchungen über die Quellen der vierten und fünften Dekade des Livi-*

us (Berlin 1863); Kahrstedt, U., *Die Annalistik von Livius, B. XXXI–XLV* (Berlin 1913); Peter, Hermann, *Wahrheit und Kunst; Geschichtschreibung und Plagiat im klassischen Altertum* (Leipsic 1911) p. 350–63; Frank, Tenney, *Life and Literature in the Roman Republic*, University of California, Sather Classical Lectures, vol. vii (Berkeley 1930) ch. vi; Shotwell, J. T., *An Introduction to the History of History* (New York 1922) ch. xxi.

LLORENTE, JUAN ANTONIO (1756–1823), Spanish ecclesiastic and historian. Llorente had been ordained and had begun his career as a politician and lawyer in church and state, when, according to his own account, he abandoned ultramontanism and adopted the philosophy of reason. He entered the service of the Inquisition in 1785 and from 1789 to 1791 served as secretary of the Inquisition of Madrid. He was an adherent of several "enlightened" ministers of Charles IV and later supported Joseph Bonaparte. Llorente is an outstanding example of a tendency, widespread in eighteenth century Spanish historiography, to make much use of archive material largely in order to justify or condemn the many political and other changes of the times; he makes pretensions of extensive documentation, for example, in various works favoring restriction of papal and regional privileges. In 1809 he undertook under French patronage a study of the archives of the Inquisition, which was followed by a series of works culminating in the not very well ordered *Histoire critique de l'Inquisition d'Espagne* (4 vols., Paris 1817–18; Spanish ed., 10 vols., Madrid 1822; abridged English translation, 1 vol., 2nd ed. London 1827). In these studies Llorente charged that the Spanish Inquisition, established against popular will because of royal cupidity and papal ambition, frequently became an instrument of royal despotism; that, however, because of the secrecy of its procedure it often constituted an *imperium in imperio*; and, finally, that it was one of the principal causes of the intellectual and economic decline of the nation. These views were on the whole current both in Spain and abroad as a result of political and intellectual developments especially during the eighteenth century. Llorente's work gained its significance chiefly from its supposed authoritativeness in the descriptions of the inquisitional methods and the numerous persecutions and trials of great statesmen, scholars and churchmen, some of whom were later canonized; the total number of victims of the Inquisition, which he calculated by absurd methods, reached appalling figures. Llorente's influence was apparent as early as 1812 in the report of the commission which recommended to the Cortes of Cadiz the abolition of the Holy Office. His studies served to substantiate the views of the liberal politicians, historians and sociologists of the nineteenth century as to the origin of the national ills, views which were widely held abroad also, and to perpetuate the dark representations of Spain which had originated in the international conflicts of an earlier era. Among a series of Catholic apologists seeking to refute Llorente was the great scholar Menéndez y Pelayo, who despised him as a traitor and irreligious hypocrite and accused him of bad faith. Although less partial students also have considered Llorente's work to be prejudiced and premature they have not agreed as to its relative trustworthiness. To some of them it has remained the beginning of serious documented study of the subject.

MAX LEVIN

Works: *Noticia biográfica de . . . J. A. Llorente, ó memorias para la historia de su rida, escritas por él mismo* (Paris 1818); *Noticias historicas de las tres provincias Vascongadas*, 5 vols. (Madrid 1806–08); *Memoria histórica sobre qual ha sido la opinión nacional de España acerca del tribunal de la Inquisición . . .* (Madrid 1812); *Memorias para la historia de la revolución española*, 3 vols. (Paris 1814–16); *Discursos sobre una constitución religiosa, considerada como parte de la civil nacional* (Paris 1819; rev. ed. Burdeos 1821).

Consult: Mahul, A., in *Revue encyclopédique*, vol. xviii (1823) 25–51; Menéndez y Pelayo, M., *Historia de los heterodoxos españoles*, 3 vols. (Madrid 1880–82, new ed. 1911–18); Schäfer, Ernst, *Beiträge zur Geschichte des spanischen Protestantismus und der Inquisition im sechzehnten Jahrhundert*, 3 vols. (Gütersloh 1902); Frédéricq, Paul, Introduction to the French edition of Lea, H. C., *A History of the Inquisition of the Middle Ages*, 3 vols. (New York 1888), tr. into French by S. Reinach (Paris 1900–02) vol. i, p. v–xxvii.

LLOYD, HENRY DEMAREST (1847–1903), American reformer. Lloyd was born in New York City, attended Columbia College and Columbia Law School and after three years' practise at the bar accepted a post on the Chicago *Tribune* in 1872. For more than a decade he served the *Tribune* on its literary, financial and editorial desks. In 1885, thanks to a competence that had been settled on his wife by her father, he was able to retire from active newspaper work and devote himself to public affairs. During the rest of his life he was the stalwart friend of all victims of economic oppression, defending, for example, the Chicago anarchists, supporting the Pullman strike, throwing in his lot with the Populist movement and championing trade

unionism, the eight-hour day and the fight on child labor. In a group of articles published between 1881 and 1884 Lloyd had already indicated his awareness of the transformation which was being effected in American economic life by the development of monopoly; this triumph of concentration he was to make the central theme of his chief work, *Wealth against Commonwealth* (New York 1894), a carefully documented, realistic study of the methods by which the Standard Oil Company had succeeded in stifling competition. It was Lloyd's hope that such an analysis would arouse the American people to an appreciation of the growing peril of concentration and force the extension of government ownership to all fields "in which private sovereignty has become through monopoly a despotism over the public." While in 1898 he was ready to admit that his message had "penetrated only a short distance through the hippopotamus hide that protects the sensibilities of the people," he did not despair of the democratic processes, refusing to accept socialism's whole program because he was opposed to confiscation and the doctrine of the class struggle. Lloyd was eagerly interested in reform in Great Britain and Ireland, where he saw in "labor copartnership" (producers' cooperatives) and welfare capitalism the answers to the inequalities of private property; in New Zealand, where he found in the compulsory arbitration court the solution for industrial strife; in continental Europe, where advocates of agrarian credit systems and cooperative marketing agencies hoped to assure the permanence of a free small landholder class; in Switzerland, where the establishment of the initiative and referendum, government railroad and a state alcohol monopoly already more than hinted at the spirit and the forms of the democratic commonwealths of the future. Lloyd put accounts of these hopeful journeys into a series of books: these were to be the signposts for intelligent Americans in search of the "new conscience." Lloyd was both the first and the finest example of the muckrakers and reformers of the two decades from 1890 to 1910.

LOUIS M. HACKER

Works: A Strike of Millionaires against Miners, or, The Story of Spring Valley (Chicago 1890); *Labor Copartnership: Notes of a Visit to Cooperative Workshops, Factories and Farms in Great Britain and Ireland* (New York 1898); *A Country without Strikes: a Visit to the Compulsory Arbitration Court of New Zealand* (New York 1900); *Newest England: Notes of a Democratic Traveller in New Zealand* (New York 1900); *A Sovereign People, a Study of Swiss Democracy*, edited by J. A. Hobson (New York 1907). Some of Lloyd's articles, addresses and lectures were published posthumously in *Man, the Social Creator* (New York 1906), *Men, the Workers* (New York 1909), *Mazzini and Other Essays* (New York 1910), and *Lords of Industry* (New York 1910).

Consult: Lloyd, Caro, *Henry Demarest Lloyd, 1847–1903: a Biography*, 2 vols. (New York 1912).

LLOYD, WILLIAM FORSTER (1795–1852), English economist and minister of religion. Lloyd was educated at Westminster School and elected to a studentship at Christ Church, Oxford University, in 1812. He became successively reader in Greek and lecturer in mathematics at Christ Church and in 1832 succeeded Whately as Drummond professor of political economy. In 1834 he was made a fellow of the Royal Society. After having held his chair for five years, as was customary at that time he retired to a living.

Lloyd's most notable contribution to economics is contained in his *Lecture on the Notion of Value, as Distinguishable Not Only from Utility but Also from Value in Exchange* delivered in 1833. This lecture gives, so far as is known, the first application of marginal analysis to explain the relation between utility and value in exchange. Although he does not use the terminology of later marginal theory he clearly distinguishes between total utility and marginal utility and shows that value is proportional to the pressure of want for the last increment of a commodity. The central idea is expounded with great lucidity and abundantly illustrated by example and analogy. His remaining eleven lectures, which he published in compliance with the statute governing his professorship, deal with the population problem and the poor laws. While accepting Malthus' main position with regard to the pressure of population on the means of subsistence, he none the less found good reasons for advocating a generous system of poor laws and was entirely opposed to the spirit of the Poor Law Amendment Act of 1834 and to the wave of opinion which that act represented.

Lloyd's style is scholarly and luminous; his reasoning clear and cogent. Although he never employs mathematical symbols, his economic analysis reveals his mathematical training. He was evidently a humane man, keenly alive to the sufferings of his age.

R. F. HARROD

Important works: Prices of Corn in Oxford in the Beginning of the Fourteenth Century: Also from the Year 1583 to the Present Time (Oxford 1830); *Lectures on*

Population, Value, Poor-laws and Rent (London 1837). The "Lecture on . . . Value" is reprinted in *Economic History (a Supplement to the Economic Journal)*, vol. i (1926–29) 168–83.

Consult: Seligman, E. R. A., *Essays in Economics* (New York 1925) ch. iii.

LOANS, INTERGOVERNMENTAL. Intergovernmental loans represent a form of financial assistance rendered by one government to another, usually in consideration of some actual or anticipated advantage to the lending country. This advantage may be direct, as in the case of financial assistance rendered to an ally in pursuit of a common war, or indirect, as when the granting of loans is aimed at preventing the financial and economic collapse of a state, whether because that state is an ally whose strength must be upheld or because its geographical, political and economic situation is such that its collapse might undermine the stability of neighboring states, the lending state included. More recently the use of intergovernmental loans has been suggested as a means of preventing violent aggression by a strong upon a weaker nation.

There are several types of intergovernmental financial assistance: the direct loan of money by one government to another, in which the creditor state procures the funds to be handed over to the borrowing state and bears the full risk in case of the latter's insolvency; the loan contracted by a group of states jointly and severally responsible—an extremely rare practise in intergovernmental finance; and government loans floated in a foreign market with the guaranty of the foreign government. This guaranty may be moral or legal: if moral, the guarantor's responsibility generally does not extend beyond the obligation to use pressure upon the borrowing state to assure the regular fulfilment of the terms of the loan; if legal, the guarantor state assumes the legal obligation to pay in case the borrowing state defaults. The guaranty frequently carries with it provisions for assigning specific sources of revenue for the payment of the loan and seldom imposes any real burden upon the guarantor state. Still another type of intergovernmental financial assistance is the subsidy; that is, the outright payment of a sum of money by one government to another without stipulation as to payment of interest or repayment of principal. This form of financial assistance has serious drawbacks. The government offering a subsidy is soon likely to meet with determined opposition on the part of taxpayers; and, on the other hand, the receiving of funds without obligation to repay is conducive to wasteful expenditure on the part of the subsidized state. The subsidy is practically unknown today. All forms of financial assistance which involve the creation of indebtedness require the authorization of the legislative organs of the countries concerned.

Direct intergovernmental loans occur in times both of war and of peace. In the latter case, which is relatively rare, they are usually contracted for definite economic ends. Instances of direct loans in peace time are the loan of 20,000,000 gold crowns advanced by the Swiss government to Austria in 1923 to be used in the work of financial reconstruction, and the numerous short term advances made after the World War by certain European powers to Austria, Hungary and other central and southeastern European states as temporary assistance until more satisfactory long term loans could be arranged. The repayment of these loans offers no difficult problem; they are small in amount and since they are applied to an economic purpose they usually strengthen the financial position of the debtor state and enable it to discharge its obligations. They involve, however, the danger of the possible political subordination of the debtor to the creditor state. Under the pretext of assuring the repayment of the loans there may be established—not only over the finances of the borrowing state but even over its political activity—an organization of control which may eventually lead to a disguised protectorate. In order that such consequences may be avoided there have been devised international loans, advanced or guaranteed by several states; in this way any one state is prevented from acquiring and exercising a preponderant influence over the debtor state and the loan operations are given the character of real financial assistance, furnished in the interest of the borrowing state and of the community of nations.

Direct intergovernmental loans are of far greater importance in times of war. They usually occur among allied governments and constitute the quickest method of placing funds at the disposal of the borrowing government, which is thus released from the necessity of making large remittances abroad at a time when its financial resources are strained and its means of international payments seriously reduced or nonexistent. Since such a loan is made at a definite rate of interest and its repayment is usually taken for granted for the time being, public opinion in the creditor country is likely to be favorably disposed toward the transaction. The funds are ordinarily employed in paying for purchases of

war materials and food supplies in the lending country, and economic activity is accordingly stimulated. Furthermore as the money lent by the government remains in the country, the problem of transfer—the most serious problem in international payments—is avoided, at least at the outset of the transaction.

The first major instances of direct intergovernmental loans in times of war were those advanced by the French government to the United States during the War of Independence. The amount of the several loans contracted between the years 1777 and 1783 was spent almost entirely in France in payment for supplies. The debts were completely repaid in 1795, in part by means of direct payment to the French government and in part through the transfer of funds to its account in the United States; these it used in payment of its American obligations. The following are instances of direct loans in the nineteenth century: the loan of £600,000 by Great Britain to Portugal in 1809, to be repaid in annual instalments at the rate of £57,170; and the loan of £2,000,000 by Great Britain to Sardinia in 1855, to be used in equipping an army of 15,000 men to serve against Russia in the Crimean War. Portugal paid its annuities until relieved from further payments by the Treaty of Vienna in 1815. Sardinia's repayments were at an annual rate of £80,000; by 1869 it had repaid £1,100,000 and still owed £1,662,547 on the principal.

Intergovernmental loans found their widest application during the World War. This period offers the most remarkable instances of direct loans in war time, not only because of the size of the sums and the range of the countries involved but also because of the political and economic difficulties besetting the liquidation of the loans. The series of war loans was initiated by Russia, which in October, 1914, applied to Great Britain for financial assistance. In 1915 France, Great Britain and Russia established the principle of pooling their financial and military resources. In the same year France sent gold to England on demand of the Bank of England in order to enable the British government to pay for purchases made in common for the account of the Allies. Some months later France demanded in turn the opening of credit for 1,500,000,000 francs. The gold sent to England was to be returned after the war, after the repayment of the credits advanced to France. The French government remitted to the British government non-negotiable short term Treasury drafts, renewable and repayable not later than one year after the conclusion of peace, which were to bear interest at the same rate as that paid by the British government on its loans. France and England extended loans to Belgium, Russia, Serbia, Italy, Rumania, Greece and other countries. With the financial exhaustion of France, Great Britain alone continued to make loans. Beginning in 1917, when it entered the war, the government of the United States became the principal creditor of the Allied countries. It loaned at first only to England, which in turn distributed among the Allies the funds thus obtained. Later the United States loaned directly to the various associates. After the Armistice the United States continued to make direct loans, which were used in payment for the purchase of American war supplies left in Europe, in financing the shipment of food to starving European countries and in the task of general economic and financial rehabilitation of Europe. The war loans as well as the post-Armistice loans were acknowledged by the remission of Treasury bonds bearing the signature of the borrowing state and carried stipulations as to interest and date of repayment. The accompanying table gives the structure of the interallied debts.

When the loans were undertaken little or no attention was paid to the economic difficulties involved in making large international payments. The borrowing governments expected that common victory would make the settlement easy: the conquered would pay the expenses of the war. During the negotiations of the peace treaties nothing was stipulated regarding the settlement of intergovernmental loans. After some years, however, the United States raised the question of repayment. In 1922 the foreign debt funding bill passed by Congress reaffirmed the principle of unconditional payment of interest and principal and provided for the refunding of the Allied debts by the issue of securities with maturity of twenty-five years, bearing an interest rate of not less than 4¼ percent, the rate paid by the United States government on its domestic war loans. This act called into being the funding debt commission, which initiated a series of funding agreements between the United States and the European debtor countries. While all agreements specify the repayment of the principal, they deviate from the original provision of the funding debt bill with respect to the period of repayment and rate of interest; repayment is distributed over sixty-two years, while the interest rate, in all agreements lower than the

NOMINAL POSITION OF INTERALLIED AND RELIEF DEBTS AT THE END OF 1924
(In millions of dollars at the rate of exchange of Dec. 31, 1924)

DEBTOR GOVERNMENTS	TOTAL DEBT	TO WHOM OWED				
		UNITED STATES	GREAT BRITAIN	CANADA	FRANCE	ITALY
Great Britain	4554	4554	—	—	—	—
British Empire other than Great Britain and Canada	622	—	622	—	—	—
France	6911	4138	2767*	6	—	—
Italy	4755	2097	2639*	—	19	—
Belgium	579	472	43	6	58	—
Russia	3872	252	3267*	—	353	—
Poland	254	179	23	—	49	3
Czechoslovakia	155	116	2	—	29	8
Portugal	104	—	104	—	—	—
Jugoslavia	308	64	149	—	94	1
Rumania	268	45	134	20	62	7
Austria	113	30	51	—	18	14
Greece	154	17	99	8	30	—
Estonia	18	17	1	—	—	—
Armenia	20	15	5	—	—	—
Belgian Congo	17	—	17	—	—	—
Finland	9	9	—	—	—	—
Lithuania	6	6	—	—	—	—
Latvia	6	6	—	—	—	—
Hungary	2	2	—	—	—	—
Grand total	22,727	12,019	9,923	40	712	33

* Net.
Source: National Industrial Conference Board, *The Inter-ally Debts and the United States* (New York 1925) p. 25.

original 4¼ percent, varies in the different agreements in accordance with a hypothetical "capacity to pay" of the respective countries. Thus the agreement with Great Britain specifies 3 percent for the first ten years and 3½ for the remainder of the period. In the Belgian agreement the pre-Armistice debt bears no interest, the post-Armistice debt is charged with a small but gradually increasing rate of interest, reaching 3½ percent in the eleventh year and remaining at that level thereafter. In the agreements with Italy and France the debts carry no interest for the first five years; the interest rate rises from ⅛ percent to 2 percent in the case of Italy and from 1 percent to 3½ percent in the case of France. The agreements with minor debtors follow in general the lines of settlement laid down in the agreement between Great Britain and the United States. Great Britain at first favored general cancellation of all war debts. Confronted, however, with the policy of the United States, it concluded funding agreements with its debtors, having previously laid down the principle that under no circumstances would it collect more from its debtors than the amount of the payments which it would be called upon to make to the United States. France too concluded funded agreements with its debtors.

The repayment of intergovernmental loans of such magnitude, however, gives rise to a series of political, economic and financial difficulties. Even assuming a formal willingness of the debtor governments to live up to the terms of the agreements, public opinion in the debtor countries generally contests the very principle of the loans, claiming that their proceeds were spent in the common interests of the debtor and creditor countries. In the case of the interallied debts the moral claim is strengthened by the fact that the European debtor states made greater physical sacrifices than the principal creditor, the United States, which made only a late entrance into the war. Even though these claims have no legal validity they have great moral force. Moreover the long period of amortization made necessary by the huge sums involved places the burden of repayment upon new generations, which will increasingly resent the payment of annuities.

Still more serious are the economic and financial difficulties of repayment. The raising of the annuities adds to the fiscal burden of the impoverished debtor countries. Furthermore the funds raised by the debtor governments are in national currency and must be converted into foreign exchange acceptable to the creditor nation. The only way to obtain international means of payment is by selling merchandise and services abroad; but in doing so the debtor countries

are confronted with the opposition of all the other countries, the creditor country included, for no state will permit its markets to be invaded by the exports of the debtor states. There is little doubt that the attempts to collect the war debts aggravated the general policy of excessive protectionism characteristic of the post-war period and contributed largely to the general economic crisis which set in in 1929. The serious fall in prices after that year further added to the burden of indebtedness, both because of the disastrous effect of the falling price level on international trade, the main source of international payments, and because of the general appreciation of the monetary unit in terms of purchasing power.

An additional source of difficulty is the link between the Interallied debts and the reparation payments (*see* REPARATIONS). Although the United States officially refuses to recognize any connection between these two categories of indebtedness—a position which is undoubtedly correct from the strictly legal point of view—it is nevertheless increasingly evident that the connection is vital. It is not likely that the European countries will continue to pay the United States unless they receive the payments due to them from Germany, and it is still less likely that Germany will ever resume payments on account of reparations. Although in 1932 the United States is still adhering officially to the principle of payment of debts, a revision of the debt problem appears inevitable. The Hoover moratorium of 1932 suspending the payment of intergovernmental debts is an expression of the impasse which has been reached in the attempt to collect the war loans.

Of wider application than direct loans are government loans floated in a foreign country with the guaranty or recommendation of that country. Debts so contracted are called commercial as distinguished from direct intergovernmental war loans, which are referred to as political debts. Governments appear more disposed to repay the former than the latter. The suspension of a political debt or the refusal to pay it does not jeopardize the credit of a state: it is always easy to find pretexts to justify the non-payment or to insist upon a reduction or cancellation. On the other hand, in the case of commercial debts contracted with individuals or private banking institutions suspension of payment or demand for total or partial cancellation signifies state bankruptcy with all its disastrous consequences to the credit standing of the country. It is largely because of this circumstance that governments desirous of lending financial assistance to foreign governments prefer the form of a loan advanced by private financiers backed by governmental guaranty. The intervention of the government may manifest itself in the form of moral pressure on the financial community to finance the loan or may be confined to a mere authorization of the loan issue. Whatever the form adopted, the state is not the direct lender; the debt is consequently commercial and is more difficult to repudiate than a political debt.

This form of financial assistance is used only rarely in times of war. In 1795 Great Britain guaranteed the payment of interest on a loan amounting to £4,600,000 floated on the London market by the emperor of Germany, who in turn undertook to employ at least 200,000 Austrian soldiers in the war against France. The payments were made for three years, after which England was obliged to assume the services of the debt. In 1797 a new agreement was concluded for the guaranty of a loan of 1,620,000 francs in order to reimburse the English government for its advances. Austria did not pay the interest and the English Exchequer carried the full amount. The debt was finally liquidated in 1823. Another instance of governmental guaranty of a loan floated by another government is offered by the Turkish loan of 1855. In order to stimulate a more vigorous prosecution of the Crimean War on the part of Turkey, France and Great Britain jointly guaranteed a loan of £5,000,000 to that country, issued in London and secured by specific Turkish sources of revenue. In case of default Great Britain was to assure the payment of interest and principal with a recourse against France. Turkey was to reimburse both countries. The obligations of the loan were regularly discharged until 1875, when they were first reduced and then suspended. From 1876 the British government assured the payment of the obligations and in 1879 France was called upon by England to furnish its contribution. The financial liquidation of Turkey in 1880 led to the organization of international financial control, under which Turkey was able to pay the obligations of the loan until the World War.

Loans guaranteed by governments are more frequent in times of peace. The guaranty is given either in order to aid a state in financial distress, usually at the close of an unsuccessful war, or in order to manifest an assumed protectorate over it. One of the earliest instances of such loans was that to Greece in 1833, when that country was

financially exhausted by the War of Independence. In order to stabilize the new kingdom and furnish it with financial resources France, Great Britain and Russia guaranteed a loan of 60,000,000 francs. It was issued in three sections, British, French and Russian, each power guaranteeing a third of the services of the loan. The payments by Greece were irregular until they were definitely secured in 1859 by the appropriation of specific government receipts. The same powers also guaranteed the Greek loan of 1898, when the country was ruined by the disastrous war with Thessaly. The loan amounted to 170,000,000 francs, and the payment of the services was secured by the appropriation of receipts under strict international control. This guaranty, which was extended to all subsequent Greek loans as provided by the act of control, was not resorted to. In 1932, however, the suspension of payments on the external debt by Greece raised the question of guaranty. A similar guaranty was extended to Egypt in 1885: a loan of £9,000,000 was guaranteed by France, Germany, Austria-Hungary, Great Britain, Italy and Russia; the obligations were regularly discharged under international control and the guaranty was never invoked. The Austrian loan of 1923 amounting to 585,000,000 gold crowns was guaranteed by France, England, Italy, Czechoslovakia, Belgium, Sweden, Denmark and the Netherlands, each nation guaranteeing only a fraction of the loan. Each guarantor state remitted bonds to the Swiss National Bank in recognition of its responsibility. These bonds are payable on demand in case of default on the part of Austria. The repayment of the loan was secured by appropriation of substantial sources of revenue under the control of the League of Nations. The Czechoslovakian loan of 1932 was guaranteed by France.

An instance of the guaranty of a loan accorded by a state as a manifestation of a protectorate assumed by the guarantor government is offered by the Tunisian loan of 1884 guaranteed by France. After the establishment of its protectorate over Tunis in 1881 France wished to suppress foreign interference in Tunisian finance. As a result of arrangements with Great Britain and Italy it repaid the Tunisian debt, which was supervised by international commission, and to this end caused the Tunisian government to issue a loan of 17,550,000 francs, for which France gave personal guaranty. Under the protectorate of France the financial administration was improved; the guaranty was not invoked.

The device of a moral guaranty of foreign loans is of growing importance. Although relatively rare prior to the establishment of the League of Nations, an early instance may be found in the moral guaranty accorded by Great Britain and France to the loan of £120,000 floated by Uruguay on the London market in 1846. Neither France nor Great Britain assumed any legal financial responsibility toward the creditors and there was no organization of foreign control over the administration of the loan. Other instances of a moral guaranty include the loans to Santo Domingo in 1907 and Nicaragua and Honduras in 1911, which the United States guaranteed morally by assuming the control over the receipts which were assigned for the payment of services. The practise found considerable extension in the period of financial rehabilitation after the World War. The economic and financial disorganization of numerous European countries, with its attendant menace of economic and social upheavals, induced the stronger states to come to their aid with loans which were accorded the moral guaranty of the League of Nations. Such are the loans to Austria in 1923, to Hungary in 1924, to Greece in 1924–27, to Bulgaria in 1926 and 1928, to Danzig in 1925 and 1927 and to Estonia in 1927. In 1926 Armenia solicited the intervention and moral guaranty of the League but did not obtain it, since the Soviet Union could not offer any effective security. In obtaining such guaranty a definite procedure has been evolved. After having previously negotiated with the principal nations belonging to the League the state in distress solicits the intervention of that body. The Council of the League instructs its Committee of Finance to institute an inquiry and to draw up a plan of aid; this is prepared in collaboration with the government seeking the loan and is then submitted to the Council. If it is approved, the protocol is drawn up and presented to the petitioning government for approval. The protocol contains the recommendation of the League that the bankers finance the loan, and it is in this recommendation that the moral guaranty lies. The guaranty has practical value. The protocol always stipulates the appropriation of ample receipts to be used in discharging the obligation arising out of the loan, the appointment of foreign commissions to protect the rights of the creditors and the organization of a more or less strict control over the public finances of the borrowing state by a delegate of the League. In case of difficulties between the delegated com-

missioner and the debtor state the decision is left to the Council of the League.

A further extension of the principle of guaranty in intergovernmental finance is contemplated in the project of an international convention adopted by the Assembly of the League in 1930. This provides that in certain cases and under specified conditions the Council of the League may decide to accord financial assistance to a state which is a victim of or threatened by aggression, if it thinks that peace can be assured in no other way. The financial assistance of the signatories to the convention will assume the form of a legal guaranty of a loan contracted by the state in need. Member states were asked to become parties to the convention beginning in January, 1932. The convention cannot come into force until a minimum of three signatories will have pledged a sum of at least 50,000,000 gold francs for the annual service on the loans to be guaranteed, and it will be concluded for a period extending to the end of the year 1945. The convention will remain in force for successive periods of five years, with the power of revocation two years before the expiration of the current period.

GASTON JÉZE

See: INTERNATIONAL FINANCE; FOREIGN INVESTMENT; WAR FINANCE; MONETARY STABILIZATION; PUBLIC DEBT; FOREIGN EXCHANGE; MORATORIUM; REPARATIONS; INTERNATIONAL RELATIONS; IMPERIALISM; INTERNATIONAL ADVISERS; INTERVENTION.

Consult: Jéze, Gaston, *Cours de science des finances et de législation financière française*, 2 vols. (6th ed. Paris 1925) vol. ii; Friedrich, Johannes, *Das internationale Schuldenproblem* (Leipsic 1928); National Industrial Conference Board, *The Inter-Ally Debts and the United States* (New York 1925); *The Stroke of the Moment, a Discussion of the Foreign Debts*, ed. by Oswald Chew (Philadelphia 1927); Gerould, J. T., and Turnbull, Laura S., *Interallied Debts and Revision of the Debt Settlements (a Compilation of Articles and Documents)* (New York 1928); Moulton, H. G., and Pasvolsky, Leo, *World War Debt Settlements* (New York 1926); Saint-Germès, J., *La Société des Nations et les emprunts internationaux* (Paris 1931); Feis, Herbert, *Europe, the World's Banker 1870–1914* (New Haven 1930); Lucien, Petit, *Histoire des finances extérieures de France pendant la guerre* (Paris 1929). For an extensive bibliography on interallied debts and reparations, see Sveistrup, Hans, *Die Schuldenlast des Weltkrieges* (Berlin 1929).

LOANS, PERSONAL. The term personal loans is used here to denote loans for personal rather than business uses, for consumption rather than production purposes. It is often difficult, especially in an agricultural society, to distinguish between the two types of loans: the difference between loans to a farmer who has consumed his seed as food and now needs money to buy new seed and to a farmer who has made allowance for seed but needs food is a narrow one. In urban life too it is often difficult to classify a small loan made to a small merchant or artisan; even pawnbroking loans may serve as the basis for a small business venture. From a historical point of view the differentiation of loans for personal consumption from those for business purposes became possible only when the merchant began to maintain special accounts for the management of his business undertakings and when the firm became clearly distinguished from the private household.

Personal loans as here understood are sometimes used, as in the case of instalment sales (really loans with the purchased article as security) and loans for the purchase of commodities which might otherwise be bought on the instalment plan, to provide for additional purchases of a type which are not absolutely necessary but possess varying degrees of desirability. The rationale and institutional arrangements for such loans are discussed elsewhere (*see* INSTALMENT SELLING). Sometimes personal loans are contracted to cover the conventional needs of a social class accustomed to elaborate expenditures, such as formerly were involved in the court service required of the knights; in modern times the extravagance of the *jeunnesse dorée* offers an analogy. In the great majority of cases, however, personal loans represent an attempt to cover deficiencies in the supply of necessities occasioned generally by some emergency which has made unexpected demands upon the resources of the borrower. Illness, death, accident or loss of some kind may tax normal income excessively. Normal and even reduced expenditures may require supplementation where normal income is inadequate or has been temporarily reduced by illness, accident or unemployment. Where loans are sought for the purpose of covering non-recurring expenditures or temporary deficiency in income, subsequent normal income may be sufficient to wipe out the debt. But where the latter is too heavy or where the normal income never reaches the normal expenditure, the loan may become an agency for peonage and enslavement.

Originally personal loans without any special recompense for the lender may have prevailed. The members of a clan, a town, a religious society, were expected to help their fellows with their surplus means. This aid among friends and

relatives appears in a more advanced society in the Biblical injunction requiring that the wealthy loan to the poor without charging interest. Although assuming the form of a loan, the aid is thought of as a charitable deed. He who is blessed with possessions gives of his abundance. No business deal is intended in this connection, nor is there any question of interest: the giving is done *gratis et amore*; as expressed in the Sermon on the Mount in *St. Luke* (VI: 35) *nihil inde sperantes*.

This ideal of altruistic communal help gave way rather early, however, to the demand on the part of the lender for compensation for the time during which he was deprived of the use of that which he had loaned. Thus among the Melanesians a young man who borrowed from the chief for the purpose of purchasing a bride had to return eleven strings of cowrie shells for every ten borrowed. Révillout states that the loan at interest was developed in Mesopotamia, whereas Egypt retained the interest free loan down to the time of Bocchoris.

The development of an agricultural economy produced a different economic basis for loans, while increasing their extent and social significance. These loans were made occasionally by the temples but ordinarily by the large landowners, who demanded and received both interest and security. Even at the time of Hammurabi Babylonian peasants were deeply in debt to the large proprietors because of loans of seed grain or cattle. In Greece Hesiod records the heavy burden of indebtedness to the large proprietors and the same phenomenon is found in Rome. Loans may be productive in an agricultural economy in the sense that seed or cattle borrowed or purchased with borrowed funds may produce enough to permit payment of some interest. But borrowers in such an economy are generally unable to repay the loan, especially if a high interest is charged. Reduced to want by illness or crop failure, while they may be enabled by a good crop to repay the interest and part of the principal they can rarely repay both interest and principal with enough to spare to sustain them until the next harvest and to provide seed for the following year; they are thus often reduced to a position of semipermanent indebtedness which becomes permanent in case of a crop failure. Because of the uncertain character of agricultural return the Babylonian law released the debtor from the payment of interest in a year of crop failure, but not when his failure to raise a crop was due to mere negligence. War with its burden of military service and its devastation of the fields increased the hazard of these loans. The destruction of the Attic peasantry by the Decelaean War and of the Roman by the Punic wars resembled the consequences of the wars of the seventeenth and eighteenth centuries in eastern Europe. Like the consumption loan, then, the agricultural loan becomes a basis for extortion and oppression. It was against such abuses that the prophets of the Old Testament and the Greek philosophers raised their voices and the Roman legislators tried to limit at least the rate of interest. The church in the Middle Ages forbade the lending of money at interest among Christians.

The lender was usually content to keep the debtor in a state of dependence through high interest charges. He could, however, utilize his power to dispossess the debtor of his homestead. Isaiah cries out against those "that join house to house, that lay field to field" (V: 8). Foreclosure and the sale of the debtor into slavery, which were permitted in many ancient societies, were generally not premeditated. Fundamentally every loan is based upon the creditor's expectation that the debtor will be able and willing to repay—that is, upon the honesty and ability of the debtor.

This reliance on the character of the debtor, however, was early supplemented by many forms which are still used to prove the existence of the debt, to enforce payment or for both purposes. The most effective proof was a written record, particularly a note signed by the debtor. In the absence of such records the creditor might invoke witnesses to support his claim in court. One of the earliest forms of security, which was at once proof and guaranty, was the pledge. The Bible, while permitting the use of this device, provided that a poor man's pledge must not be kept overnight (*Exodus* XXII: 26; *Deuteronomy* XXIV: 12–13). Loans on pledges at interest seem to have been employed by the Melanesians even before the coming of the whites. Where no pledge was used, the creditor might demand the guaranty of a third person, who would become responsible for the debt should the debtor fail to pay. The precarious position of the guarantor is frequently commented upon in the Apocrypha, while Cheilon of Sparta said "If you go security, you are in misfortune." The surety device forms one of the corner stones of the modern system of small loans (*q.v.*).

In the collectivist feudal society consumption loans to individual serfs played a minor role.

The position of the serf was more or less static and was bound up, through the strip system of agriculture, with that of the entire manorial group. The peasant's share in the land was practically inalienable and the responsibility of his maintenance in times of emergency was accepted by the lord of the manor. In the towns the guilds provided mutual insurance against certain exigencies. Even in the Middle Ages, however, townspeople were forced for one reason or another to appeal to the money lender, as is evident from the importance possessed by pawnbroking at that time.

The important consumption borrowers during the Middle Ages were the kings, the ecclesiastical lords and the feudal nobility. Certain of the loans made to these borrowers were related to emergencies, such as foreign wars; knights who participated in the crusades, for example, were forced to borrow for the purpose of arming and maintaining a fighting force for a long period of time far from their native land. Often, however, they were merely to cover, in anticipation of revenues from the feudal or sovereign realm, certain more or less regular expenditures or payments. Important among the latter were the papal dues levied upon the various ecclesiastical lords; a well developed system of loans was organized in Rome, apparently with papal approval, to permit the lords to make their payment to the Curia before they had collected the dues for their districts. Attendance at court entailed heavy expenditures, while the luxurious tastes contracted by many of the crusaders through their contact with eastern civilization resulted in a higher standard of living and a continued need for funds.

While the town of antiquity was the seat of landowners who engaged also in lending out money, the mediaeval city was a city of merchants. The merchant supplied the requirements of the feudal aristocracy. In the course of transactions on credit the merchant very often made his noble customers dependent upon him, so that finally land and rights fell into the hands of the lender.

Spendthrift and ambitious monarchs alike found themselves in constant need of additional funds. Loans to needy sovereigns were frequently made by prominent mediaeval merchants, such as the Bardi and Peruzzi of Florence, who lent money to the kings of France and England during the fourteenth century; the Fuggers, who did the same for the Hapsburgs; the Medici, who furnished the financial basis for the power of the popes. Since these loans were based in last analysis upon the lender's good standing with his sovereign, they involved considerable risk. A pope, such as Sixtus IV, hostile to the Medici might turn the administration of the Curia over to others, leaving the Medici in a very difficult position. The Bardi and Peruzzi suffered heavily from the bankruptcy of Edward III in 1345 and the Fuggers from the national bankruptcies of the sixteenth and seventeenth centuries.

When the national state replaced the absolute ruler personal loans for the consumption needs of the sovereign gave way to other forms. The continuity of the state, with the consequent possibility of standing loans, was first established in the mediaeval cities; this idea was transferred to larger territories and to national states through the constitutional monarchy. But the idea of the state as a borrower for consumption purposes, which was dominant in the public finance before the emergence of the national state, still exists in such expenditures as those for war and armaments (*see* EXPENDITURES, PUBLIC).

During the seventeenth and eighteenth centuries the lords, who borrowed heavily to finance the high expenditures imposed upon them by attendance at court and by the necessity of providing annual levies, were forced either to introduce more efficient methods of management on their estates or to surrender them to their creditors, who farmed them more efficiently. Thus the increased consumption needs of the landed nobility indirectly contributed to the technological improvements which characterized agriculture in this period.

During the greater part of the Middle Ages the foreign merchant and money lender had dominated the business of providing personal loans. The person in need, disliking to reveal his plight to his neighbor, frequently turned to the foreigner, even though the latter imposed harder conditions upon him. Among the foreigners may be included the Jews, who although they had no home other than their place of residence, were generally considered foreigners because they had no community with the parochial church. They were exempt from the general canonical prohibition against usury. The Jews were generally admitted to a particular city only on sufferance, for a limited period of time and on condition of the payment of an annual due. From time to time they had to pay extraordinarily burdensome tributes; they were expelled from England and France in the thirteenth cen-

tury and from the German imperial free towns in the fourteenth century.

During the thirteenth century the dominance of the Jews was challenged by that of the Lombards, who generally came as fiscal agents of the pope for certain purposes and engaged in money lending on their own account. They were generally subject to the same legal restrictions as the Jews, and contemporary literature indicates that they were economically more exacting than the latter and were equally condemned by the people of the time. Since they were under the protection of the pope the Lombards did not suffer, as did the Jews, during the crusades; although the poor complained of their high interest charges, the rich found it advantageous to invest their surplus funds with these pawnbrokers. Another important foreign group of money lenders were the Caorsini, or Kawerschen, so-called after the city of Cahors in Provence. Schulte has shown that the name Caorsini was a generic term for usurers in the thirteenth century and that the Caorsini who settled in southern Germany as pawnbrokers, money changers, tax farmers and minters were actually exiles from the city of Asti. The Sienese who went to England as tax collectors for the pope were also called Caorsini. Loans at interest were also made by religious institutions, by the nobility (who, particularly in the vicinity of Cologne, loaned to other nobles) and by wealthy native burghers. In many territories the Jews were readmitted because they charged a lower rate of interest than that ordinarily charged by other money lenders. They enjoyed a very considerable influence during the eighteenth century in the eastern monarchies of the European continent, especially under the dynasties of the Hohenzollerns and the Hapsburgs.

The promissory note in connection with loans was greatly developed in the Middle Ages. Notes were often so drawn as to nullify all objections, including those of the canon law, and to effect a speedy payment. Knights departing for the crusades signed bills in Genoa and Venice which obliged the guardians of their castles to repay the Italian merchants at one of the next fairs in Champagne. In the south notes were usually drawn up before a notary public, while in northern Europe they were recorded in the town records in the presence of the town magistrate. The pawned pledge also continued of such importance that it was customary to invest part of one's property in goods which could easily be pawned, such as table silver and jewels. Insignia of power were also pawned. The English crown was pawned with Italians and with Hanseatic bankers. Pope Martin was forced to threaten Cosimo de' Medici with excommunication in order to regain the miter pawned by Pope John XXIII.

The interest rates on personal loans were very high during the Middle Ages, the customary rate being about 43 percent per annum. In order to ease this tremendous burden on the needy various attempts were made to found under religious or charitable auspices institutions which might loan funds at lower rates. One of the earliest of these was the attempt to establish pawnshops, controlled either by a religious order or by some governmental agency, which would loan funds on pledges at much lower rates of interest (*see* PAWNBROKING). Unsuccessful attempts to establish institutions such as those which later came to be called *montes pietatis* were made at Freising in Bavaria in 1198, at Salins in Franche-Comté in 1350 and in London in 1361. The first successful *mons pietatis* was established by the Franciscans in Perugia in 1462; it was followed the next year by one in Orvieto, and others sprang up rapidly throughout Italy. Loans were made at the rates, low at the time, of 4 to 12 percent, which covered administrative expenses and paid a small interest charge on the capital invested. Protests by the Dominicans against any charge for the loan precipitated a religious conflict which was not quelled until 1515, when the Lateran Council approved the Franciscans' institutions and method of functioning. The *montes pietatis* spread chiefly throughout Italy, Belgium, Germany and France. In 1777 there was set up in Paris by the French government a *mont-de-piété* which has been maintained continuously ever since; municipal pawnshops are also operated by many French cities, while pawnshops which are operated by various governmental agencies are common on the continent where they function either as monopolies or in competition with private pawnbrokers.

In addition to these public and charitable pawnshops various other agencies to provide personal loans have been developed. Although credit cooperatives are generally for production loans, some of them provide only personal loans; others furnish both types. In addition various special facilities for small loans have grown up, particularly in the twentieth century, to provide small personal as well as business loans and have integrated these types of loans more definitely

in the credit structure of the modern economic system.

HEINRICH SIEVEKING

See: FINANCIAL ORGANIZATION; SMALL LOANS; INSTALMENT SELLING; CREDIT COOPERATION; PAWNBROKING; USURY; PLEDGE; DEBT; CREDIT.

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LOBBY. The lobby has yet to live down its past. So frequently has it been associated with the efforts of the unscrupulous to secure legislation for their selfish ends that an unfavorable connotation has persisted. The lobby has usually been brought to public attention because of its derelictions and has been represented on such unfortunate occasions by the least savory of its practitioners. Privilege seekers, it can be safely assumed, are always to be found about legislative bodies. A scandal merely serves to remind the public of their presence. Efforts to direct the process of lawmaking by pressure from selfish outside interests were made in the First Congress. In March, 1790, William Maclay wrote in his journal concerning the struggle to pass the bill funding the national debt: "I do not know that pecuniary influence has actually been used, but I am certain that every kind of management has been practised and every tool at work that could be thought of."

An outstanding early case was that of Manassah Cutler, who secured aid for his land promotion scheme in 1786 by sharing profits with influential members of Congress. Professional persuaders in the past have exerted all their wiles to secure favorable action for the interests that employed them. Gaming resorts, such as Pendleton's "Palace of Fortune," are said to have been their places of rendezvous. Sam Ward was one of these adventurers who won recognition as a legislative fixer.

The term lobbying was not applied generally until after the middle of the last century. It was the scandals of the 1870's that challenged public attention. The investigation into the Pacific Mail Steamship subsidy lobby revealed great sums expended for bribing government officials and legislators. Cakes Ames as agent of the Crédit Mobilier unabashedly sought to exchange railroad shares for legislative support. The demand for the enactment of measures to curb the lobby came to nothing. A feeling grew that many congressmen failed to consider the national welfare. The lobbyist was regarded as the agent of big business seeking to corrupt the representatives of the people. Beliefs of this sort added to the strength of the Greenbackers, Populists and other reformist groups. The railroads and large corporations were suspected of improper dealings with legislative bodies; nor were all of these suspicions without foundation. The New York investigation of 1905 reported upon the efforts of insurance companies "to procure or prevent the passage of laws affecting not only insurance but a great variety of important interests to which through subsidiary companies or through the connections of their officers they have become related." It was found that enormous sums had been expended in a surreptitious manner. In varying degree the situation which was disclosed in New York held true for a number of other states as well.

The quickened interest in political and social problems coming in the decade after 1905 had its effect upon the lobby. The farmer, the laborer and the reformer decided that it was to their advantage to maintain permanent offices at the capital. Special interest representatives openly undertook systematic campaigns to influence the course of legislation. Muckraking, "trust busting" and reforms in governmental structure

stimulated people toward a direct exercise of their power in politics. The direct election of senators worked some change in the distribution of political influence, and the overthrow of "Cannonism" disrupted the domination of the House by a few men.

The investigation of the lobby prompted by President Wilson in 1913 demonstrated that a change had occurred in the methods of influencing legislation. The old secretive means of persuasion proved their ineptness under changed conditions. Those seeking favorable action made demands on the government in the name of the voters they claimed to represent. The World War served to stimulate the organization of such groups. Trade associations grew in size and number, trade unions increased their membership, and individuals in many walks of life through recourse to the various associations that stood for particular interests found their relations with the government simplified. The expansion of governmental services and regulatory agencies has increased and complicated the points of contact between citizen and official. It has made the government a potential factor of aid or of interference in a multitude of day to day operations. Some special interest spokesmen come to the capital seeking profit; others are afraid not to come.

Virtually every interest of any national importance has its spokesmen in the capital, and the state legislative bodies find themselves confronted with similar agencies. Current problems bring appropriate propaganda agencies into existence; fundamental social and economic interests are represented by permanent and substantial organizations. In the case of the latter lobbying is but one phase of their activities, while with the former persistent agitating is their only justification for existence. The attainment of their goal means desuetude unless another cause is soon found. Moreover there are some societies that exist merely to lobby and to solicit support for their organizers from the gullible on the strength of unprovable boasts of success in influencing legislation. Congressional investigations have time and again exposed such quacks, scoundrels and frauds.

The many able and honest lobbyists carry on their work year after year unnoticed and unknown to the general public. They are recruited largely from the law, from journalism and from the government service. Former legislators have sometimes become conspicuous lobbyists. Not a few are technical experts or scientists; some are business men and some professional promoters or reformers. These men regard themselves as the representatives of the voters who compose the membership of their respective leagues and associations. These organizations usually hold annual conventions, where policies are discussed and a program is agreed upon for the coming year. Frequently a legislative committee is charged with the task of lobbying for those measures which the convention designates. Most lobbyists claim that they are simply carrying out such instructions.

In an estimate of the power of a lobby the cohesion of the membership is of as much importance as its numerical strength. In the final analysis it is the lobby's control of votes that constitutes its means of forceful persuasion. It can evoke the threat of appealing to the congressman's constituents against his position. A well organized minority of determined voters working together for definite purposes constitutes an element that cannot be ignored in any campaign. Few legislators refuse to compromise in such a situation. The lobbyist by closely following the course of legislation and watching the votes upon questions of concern to his organization keeps his supporters informed. Usually they are simply urged to write to their representatives requesting favorable action, although sometimes the lobby participates in election campaigns. It is easy, however, to overestimate the effect of such activities. The lobbyist is largely concerned with supplying information to congressmen and appearing at committee hearings. As expert witness and as spokesman for special interests he aids in the consideration of technical legislation and moreover assists in the enactment of acceptable laws.

Whether in seeking to influence legislation by campaigning for candidates who will not oppose his policies or in persuading those already in office to take a sympathetic attitude the lobbyist is careful to preserve a strictly non-partisan position. He has certain definite aims to achieve and he finds little to gain through identification with one or another party. In fact party discipline would create a conflicting loyalty. The lobbies most strongly intrenched are able to command the votes of blocs in the legislature without regard to party affiliation. All the important lobbies can depend upon the support of a few congressmen or senators. These men sponsor the measures framed by the lobbyists, introduce their propaganda into the *Congressional Record* under the privilege to extend remarks and then

permit its distribution by congressional franking. They attempt to secure prompt action on the lobbies' bills, reading the speeches and using the arguments supplied them by these interests. A bloc of faithful supporters in the legislature is the strongest weapon the lobby can have. Many congressmen are members of one or more organizations that have occasion to seek legislative favors. The American Legion, for example, can depend upon the aid of the legionnaires in Congress for most of its measures. The Legion lobbyists work in closest cooperation with them, drafting bills, securing hearings, presenting evidence, rallying aid from the home districts and seeking press support.

It is the realization of the power of propaganda that has made present lobbying methods what they are. Abuses are not so crude as in the early days. Bribery no longer plays a part, but backing can be bought through the more subtle means of supplying favorable publicity or assistance in campaigns. The public utilities corporations, for example, in attempting to build up a favorable public attitude directed their propaganda not only to public officials and the press but likewise to the schools and to research institutions. In varying degree other economic interests and reform leagues strive to foster public support for their cause and then use this favorable opinion in appealing to legislators. They insist that they represent great forces within the community: some do, while others must first create the opinion they later reflect.

The evils to which the present lobby gives rise are deception and coercion. The forces of a group opinion can be vastly exaggerated by skilful manipulation and used to threaten a public official. Cowardice is a common political weakness and one that permits lobbyists often to be taken at their own evaluation. Most of the legislation for the regulation of lobbying simply demands of the lobbyist that he appear in his true colors. Measures regulating the lobby have been advocated since the 1870's; a bill "to prevent professional lobbying" was introduced in the Fifty-third Congress; several further efforts were made in later congresses, the Sixty-third Congress being especially active in investigating and attempting to pass regulatory legislation. Five bills were introduced in the session of 1927 and four in 1929–30. Extensive inquiries into lobbying activities were made by Congress in 1913 and in 1930. Although there is as yet no federal law on the statute books, thirty-two states have enacted some form of regulatory legislation. In Georgia the constitution of 1877 declares lobbying to be a crime. Massachusetts in 1890 and Wisconsin in 1899 were the first states to pass laws requiring the registration of lobbyists. Many of the other states have adopted this same principle in their laws. The lobbyist must give his name and that of his employer and indicate the legislation with which he has been concerned. His employer must file a statement of expenses. Publicity was thought sufficient to provide the necessary protection. The proposed federal laws adopted the same safeguard.

The laws thus far enacted have not been entirely successful. Registration in itself does not challenge public scrutiny, and inadequate provisions for enforcement render such lists well nigh meaningless. In fact the existing laws in many cases are not strictly observed and serve little purpose. In framing a law it is difficult to define lobbying in terms that will check the deceitful and dishonest and still not restrict the citizen's right of petition. An effective law must require more than registration yet should not hamper those who wish to make known their views to legislators. Laws cannot be made in isolation from those who will be affected by the law. Successful lobbying can be conducted through the mails; propagandists need never meet their subjects face to face; yet communication with congressmen could scarcely be supervised. Wealthy groups may create a semblance of popular support by artificial means, and even a relatively poor but well organized group may develop sufficient synthetic opinion to give the appearance of a widespread public interest. Can such activities be curbed without affecting the right to free association for common purposes? A system for disclosing the name and connection of all those lobbying together with a full report as to their expenditures might prove useful if strictly enforced and widely publicized. The term lobbyist would have to be carefully defined and narrowed in its application. Some check upon the accuracy of the reports made would be necessary.

It is futile to attempt to legislate the lobby out of existence. The lobby has become part of the American system of representation. It provides a means whereby a form of functional representation is made to supplement the geographical system. With the political parties failing to take a definite stand upon controversial issues agencies concerned with the promotion of a particular issue or definite interests become necessary. Lobbying organizations exist because thousands

of citizens give them support. This is evidence of a feeling that some matters are of so much concern to the welfare of the individual that the formal system of political representation is not adequate. The citizen apparently believes that certain affairs vital to him may fail to receive the consideration they deserve. He is willing to undertake the trouble and expense of supporting a lobby in the belief that it will better protect his interests and perhaps secure favorable legislation.

While the informal and inadequately regulated lobbying in the United States fills a need it leaves much to be desired. Misrepresentation and lack of balance are inevitable. Propagandists and self-seeking promoters may exercise an influence far in excess of their relative social significance. The cry of special interests tends to drown the plea of the general interest. The public has no lobby. In many European countries economic councils have been instituted to bring together in an orderly array representatives from the various economic classes of the nation. The creation of a board composed of economic experts who would call upon national associations for advice in national planning is now being considered for the United States. While it is doubtful that lobbying would be absorbed in the activities of such a body, the according of a degree of official recognition might introduce some order into the existing informal and disorderly system of functional representation. The unimportant and "fake" organizations might thus be eliminated and the lunatic fringe of reformers clipped.

As a whole, however, the present day lobby cannot be dismissed as an abnormal appendage to the legislative body. It has become a political institution. Whether its potentialities result in good or evil depends not only upon the lobbyists themselves but upon the public and the government.

E. PENDLETON HERRING

See: PUBLIC OPINION; INTERESTS; REPRESENTATION; LEGISLATIVE ASSEMBLIES; PARTIES, POLITICAL; BLOC, PARLIAMENTARY; FARM BLOC, UNITED STATES; MACHINE, POLITICAL; CORRUPTION, POLITICAL; BRIBERY; TRADE ASSOCIATIONS; ANTI-SALOON LEAGUE; CIVIC ORGANIZATIONS; FUNCTIONAL REPRESENTATION; NATIONAL ECONOMIC COUNCILS.

Consult: Logan, E. B., "Lobbying" in American Academy of Political and Social Science, *Annals*, vol. cxliv, supplement (1929); Herring, E. P., *Group Representation before Congress*, Institute for Government Research, Studies in Administration, vol. xxii (Baltimore 1929).

LOCAL FINANCE comprises the fiscal activities of the primary as well as the intermediate units of local government. The scope and problems of local finance depend therefore primarily on the position of local government within the general governmental system of the country. The size of the local units, the scope of functions entrusted to the local bodies and the extent of central control over local activities all affect the structure of local finance. Diverse systems of local government have produced a corresponding variety of local fiscal organization. The term local finance is also used to designate that part of fiscal science which deals with the principles underlying the financial organization of local government.

The distribution of administrative functions between the central government and local authorities has been influenced not only by political but also by financial considerations. The central government has usually reserved for itself those functions which it considers indispensable to the safety and stability of the state. On the other hand, governmental functions which clearly redound to the benefit of the local population have been assigned to local authorities. Still other functions have been entrusted to special local bodies, such as school districts, park districts and public utility organizations (in Germany, *Zweckverbände*), which were organized for the purpose of supplying specific local services. Parallel to the functional distribution of expenditure between the central and local powers there has also evolved a gradual distribution of revenue between the two spheres of government. This division may assume various forms: specific sources of revenue are assigned to the respective authorities; or one sphere of government, usually the local, is permitted to add supplementary rates to the existing state taxes; or a centrally administered tax is shared with localities or a locally administered tax with the central authorities; or, finally, the arrangement may involve a complete concentration of tax revenue in the hands of one, usually the central, authority, which in turn undertakes to finance the local activities in the form of subventions and grants-in-aid.

Neither on the expenditure side nor on the revenue side is it possible, however, to draw a clear line of demarcation between the two spheres of activities, and the fiscal interrelationships vary from country to country and in point of time within the same country. In Great Britain and the United States the local bodies may

exercise only the specific powers bestowed upon them by the Parliament and state legislatures respectively. In continental countries, on the other hand, the prevailing practise is to distinguish between necessary, or mandatory, and permissible, or optional, expenditure. The first group originally included items of expenditure in which the local population had very little interest; for instance, the supply of housing facilities for the army. Later a more liberal attitude prevailed. The mandatory expenditures, prescribed in general terms by the central authority, ordinarily include expenditure on education, elections, some phases of the administration of justice and to an increasing extent measures of social welfare, such as poor relief, labor exchanges, unemployment relief, child welfare and juvenile courts. The enforcement of the mandatory provisions is greatly facilitated by the extensive control of central authority over local authorities in European countries. The superior authority may refuse to approve the budget which contains omissions of mandatory expenditure or may even insert the mandatory expenditure into the local budget. Beyond the mandatory expenditures, however, the local bodies enjoy considerable freedom in widening the scope of expenditure, subject of course to general restrictions with regard to tax limits, limitation of indebtedness and similar regulations.

The increase of local expenditure in practically all countries is due in part to the widening range of purely local governmental activity and in part to the assignment to local authorities of certain governmental functions which, although general in scope and significance, can best be performed by them. The rate of increase has been considerably accelerated since the World War, particularly in the fields of social welfare, education, poor relief, highway construction, housing and unemployment. Notwithstanding extensive grants-in-aid and subventions by the central authorities to localities to satisfy the increasing demands for revenue, the financial position of the local governments in almost all countries has become extremely strained in recent years. The significance of local expenditures becomes more obvious when it is realized that the chief item in national expenditure consists of payments for national defense and for service on public debts. With these sums deducted the percentage of local to total expenditure on regular public administration amounted in 1925–26 to 82 percent in Great Britain, 57 percent in France, 71 percent in Belgium and 54 percent in Italy.

Generally speaking, the development of local finance in modern times moves in the direction of centralization of revenues and decentralization of expenditures. The democratic demands for additional government services and post-war economic distress have created a heavy drain on public finance. The more the governments have been compelled to satisfy those demands, the more the authorities have had to resort to local administration. The increasing role of expenditures for social services may be seen from the following figures: In Great Britain the expenditure on social services (other than expenditure out of loans for capital purposes) reached in 1929 the amount of £403,950,000 as compared with £63,000,000 in 1910. Unemployment claimed £53,296,000; health insurance, £38,570,000; widows', orphans' and old age contributory pensions (for those between sixty-five and seventy years of age), £26,445,000; old age non-contributory pensions (for those over seventy years), £35,780,000; war pensions, £51,375,000; education, £100,510,000; reformatory and industrial schools, £690,000; hospitals, maternity and child welfare work, £11,418,000; housing of the working classes, £35,598,000; relief of the poor, £44,997,000; lunacy and mental deficiency service, £5,271,000. Of the total amount £94,164,000 was raised by local taxation, £184,018,000 by parliamentary votes and grants of the Treasury and the remainder by contributions, rents and the like. The administration of these services is chiefly done through the local authorities. In Germany of the total local expenditure amounting in 1928–29 to 8,241,900,000 marks

National and Local Expenditures in Selected Countries

Country		Year	Expenditures (in 1,000,000)	
			National	Local
Great Britain	pounds	1925–26	668	414
France	francs	1925–26	38,971	10,510
Belgium	francs	1925–26	4,966	3,365
Italy	lire	1925–26	16,095	6,200
Germany	marks	1928–29	12,559*	8,242†
United States	dollars	1929	5,922‡	7,126
Japan	yen	1929–30	1,736	1,753

* Includes expenditures of the states, amounting to 4184 million marks.
† Includes expenditures of Hanseatic towns, amounting to 622 million marks.
‡ Includes expenditures of the states, amounting to 1990 million dollars.
Source: Figures for Great Britain, France, Belgium and Italy are taken from Germany, Statistiches Reichsamt, *Finanzen und Steuern im In- und Ausland* (Berlin 1930) p. 650; other figures cited from official sources of the respective countries.

(inclusive of 621,900,000 marks spent by the Hanseatic towns) care of the poor, minors, invalids, unemployed and insane claimed 2,186,600,000 marks and education 1,556,800,000 marks. Housing, scarcely known as an item of public expenditure before the war, required in 1928–29 an expenditure of 1,542,400,000 marks, of which 1,119,700,000 marks were spent by local bodies.

In the United States local expenditure has shown a continuous increase and in 1929 it reached the total of $7,126,100,000. From 1923 to 1929 the proportion of local expenditure to the combined total of all public expenditure in the United States increased yearly. In 1929 education accounted for $1,925,500,000, highway construction for $1,169,900,000 of net local expenditures, the remainder being distributed among various items, such as cost of government administration, protection, various measures of economic development and social welfare.

The widening scope of local expenditure was not, however, accompanied by a corresponding movement in the field of local revenue. On the contrary, the trend in revenue collection in recent years is unmistakably in the direction of greater centralization in the hands of national or state authorities. Legislation in post-war Germany brought about strong centralization of revenue in the hands of the federal government. The local authorities are prevented from levying any tax which the federal government chooses to reserve for itself. The revenue system in Soviet Russia is almost completely centralized. Even in the United States, where decentralization of revenue has gone furthest and where originally the bulk of state revenue was derived from locally administered taxes, the tendency is unmistakably in the direction of state administered and locally shared taxes.

The necessity of centralizing revenue and of transferring a considerable part of the local tax burden to the central authority is dictated largely by the limitations inherent in local taxation within a national economy. As compared with the facilities of the national government the possibilities of raising revenue by local bodies are quite limited. All forms of indirect taxation are practically closed to local authorities. They are unable to levy customs duties, although they may collect the so-called *octrois*; that is, duties levied on goods entering town. In France and other countries *octrois* at one time yielded enormous returns and often constituted the chief source of municipal revenue. They have, however, been universally condemned as interfering with internal trade, and the cost of their collection is very high. France has therefore adopted a policy of gradual suppression of *octrois* and in 1918 abolished the local levies on beverages, compensating the communes by a special fund, *contributions indirectes*, created from national sources, the proceeds of which are distributed annually among the local communities. In 1930 in France 968 communes still collected *octrois*, with a total yield of 964,000,000 francs. In Belgium and Holland *octrois* were prohibited and replaced by direct grants of the national governments to local bodies. The new Italian tax code which became operative in 1932 abolished all *octrois*; by way of compensation the national government assumed the payment of salaries to school teachers and judicial officers, hitherto an item of local expenditure.

Local bodies are also virtually precluded from the possibility of collecting excise duties; in fact, local excise taxes are doomed to be defective, they are easily subjected to evasion and graft and may undermine a federal or state tax of the same character. Similarly a local sales tax is technically an anomaly. Local bodies, particularly municipalities, may exact an indirect tax by charging high prices for services supplied by municipal public utilities. Considering the danger of such indirect taxation, the tendency is to impose legislative limitations on the amount of profit allowed such enterprises.

Nor are all forms of direct taxation suitable sources of local revenue. The inheritance tax is clearly unsuitable: it would introduce abnormal variations in the revenue system of the locality and would lead to evasive practises, aggravated by the inevitable tangle of jurisdictional tax disputes and multiple taxation. All attempts to introduce a local inheritance tax in Great Britain have been rejected. The corporation tax and the income tax are equally unsatisfactory as local taxes; in both the base transgresses local boundaries. The difficulties which are involved in localizing the wealth of the corporation or the income of the taxpayer would render any such taxation largely inoperative or arbitrary. In pre-war Germany the states were forced to restrict the localities in their levying of income taxes. In Holland, where for generations a local income tax constituted the backbone of local revenue, yielding approximately three fourths of all municipal taxation, the government finally prohibited local income taxation in 1929 and established instead a centrally administered com-

munal fund which is redistributed among the local bodies according to population and other indices, such as assessed wealth and the average public expenditures on police, education and public assistance.

Local income taxation failed chiefly because of the difficulties involved in the apportioning of taxable income to different taxable areas and because of the resulting diversity of tax rates in different communities. Consequently the only possible solution left to local authorities is the levying of separate taxes in rem (*Realsteuern*, real taxes), either in the form of specific taxes on land, buildings, local business, securities and wages or partly in the form of a classified property tax. A special surcharge on local real property and business is perfectly justified, as they are usually the principal beneficiaries of the bulk of local expenditure; the value of real estate in a locality increases with high local "beneficial" expenditures on roads, sewers, water supply, lighting, health, fire and police protection and educational facilities. Where a certain expenditure clearly redounds to the benefit of a specific property, the device of a special assessment or betterment tax should be applied to cover the cost incurred. More often the beneficial character of the local expenditure is of a general nature and calls for a general tax on the benefited property. Where, however, the localities perform functions which are clearly of a national character, where the maintenance of a "national minimum" of efficiency, such as a certain standard of education and public health, seems indispensable to the welfare of the state, the national treasury should subsidize the localities in the performance of such functions.

The application of the principle of benefit in local taxation has been unduly attacked by some fiscal writers but is well established in fiscal legislation. Thus the Prussian *Kommunalabgabengesetz* of 1893, which was the most noteworthy pre-war legislative act concerning local taxation and is in the main still in force, stressed the necessity of basing local taxation on benefit and services rendered and consequently encouraged fees and special assessments. It assigned to the exclusive use of the localities taxes on land, on buildings and on business. Just before the World War the tax on the increment of land value (*Wertzuwachssteuer*) found wide application in German municipalities; it was later absorbed by an imperial tax of similar nature. In Great Britain the bulk of local taxation is derived from the rates levied on the occupier of real property. In the United States the proportion of revenue from property taxation to total local tax revenue amounted in 1930 to fully 92 percent, ranging from 98.74 percent in Oregon to 75.76 percent in Alabama. In nearly three fourths of the states property tax revenue amounted to more than 90 percent of all local tax revenue. A number of states have even attempted a complete separation of sources by assigning to localities the exclusive use of the general property tax. It was hoped that this measure would remove the incentive for underassessment and would result in a generally fairer distribution of the burden of taxation. Although the application of this measure resulted in increasing local revenue in many instances it fell short of the general expectations which prompted its adoption. Moreover the rigid application of the principle carries with it the danger of rendering the tax system too inflexible. Local taxation in the United States could be much improved by the resolution of the general property tax into its constituent elements—that is, into a series of specific taxes on income yielding property—or by its transformation into a classified property tax with different rates for each type of property.

The financial disparity resulting from the widening scope of local expenditure and the limited base of local taxation accounts for the increasing importance of national contributions to local treasuries. In 1925–26 the proportion of local revenue derived from grants-in-aid, subventions and centrally administered but locally shared taxes amounted to 25 percent in Great Britain, 21 percent in Belgium, 13 percent in France and 11 percent in Italy. In Germany the localities were compensated for the rigid limitation upon their tax revenue by assignment of a portion of the centrally administered taxes. In Soviet Russia practically the whole local revenue is supplied from national revenue. In the United States the state grants to localities amounted in 1925 to an average of between 7 and 8 percent of total local revenue for all states, ranging from 0.8 percent in Kansas to over 27 percent in Wyoming. Also of growing importance is the share of revenue derived by localities from taxes administered by the state; in 1925 they yielded 4.1 percent, in 1928 5.6 percent of the total local tax revenue. In many states the shares granted to local bodies are by way of compensation for the withdrawal of certain classes of property from local taxation; in others, they constitute an outright grant in response to increasing financial needs of local governments. The shares are al-

lotted on various bases: tax revenue, assessed valuation of property, financial needs of the respective localities; the state subsidies and the shares of state taxes accruing to localities are frequently assigned to special functions, such as education, highway construction and others, which although originally of local nature have acquired an increasing general significance.

A system of national or state subsidies may also be used as an effective means of equalizing the distribution of expenditure and the tax burden between wealthy and poor districts. This is applied on a large scale in England. London has created special equalization funds from which a part of the local revenue obtained by taxation of the wealthier districts is redistributed among the poorer districts. France gives special subsidies to the poor provinces, and the German government has recently undertaken a thorough investigation of the taxing capacities of local districts with a view to a more effective distribution of local expenditure and revenue.

The increasing interest in local finance since the World War has produced important legislation, particularly in the field of the fiscal interrelationships between the central and local authorities. The British Local Government Act of 1929 represents a remarkable piece of legislation and is especially noteworthy for its solution of the problem of grants-in-aid and the relation of national and local finance. It devised a scheme of local taxation relief by providing that the national Treasury assume the whole burden of local taxation of agricultural property and three fourths of industrial and freight transport hereditaments (real property). For this reason the British national budget for 1932–33 has increased the total amount of grants to local bodies to £136,000,000, of which £46,000,000 is on account of local taxation relief, £51,000,000 in educational grants, £15,000,000 for housing and £11,000,000 in police grants. In France, where the *centimes additionnels*, or supplementary rates, imposed upon national direct taxes constituted one of the important sources of local revenue, the approach to a reform of local taxation is much more conservative. Its interesting feature is the possibility of extensive use of house rentals for tax purposes (a reformed progressive *contribution mobilière*). The law of 1926 granted to the local bodies the right to levy twenty-three different kinds of local taxes, of which the most important are taxes on net revenue of buildings and land, on house rentals and business offices, on servants and vehicles. But even a liberal application of all of these taxes does not solve adequately the problem of balancing the local budgets. Of great interest are the Dutch law of 1929 and the numerous financial settlements (*Finanzausgleiche*) in Germany, Austria, Switzerland and other countries which are attempting to solve the problem of the relations between federal, state and local finance.

Recent development of local finance in European countries shows centralization not only of revenues but of local borrowing as well. In Great Britain the local loans policy is highly centralized and supervised. In France the contracting of a debt requires the approval of higher authorities, in some cases that of the president of the republic. Restrictions of similar nature exist in practically all European countries; some attempt not only supervision of local indebtedness but centralization of local borrowing as well. Thus in Germany the Deutscher Zentralgiro- und Sparkassenverband serves as the central credit agency of the local bodies. The Belgian central institution, the Crédit Communal, provides communes with loans on a cooperative basis. In Great Britain the Public Work Loan Board advances money to local authorities for public works, chiefly for sewage, water supply and housing. In France the law of 1931 called for central provision of local credit through the Caisse de Crédit aux Départements et aux Communes.

In the United States local indebtedness has increased rapidly in recent years; in 1928 it amounted to $11,106,000 as compared with the states' indebtedness of only $1,502,000,000. Local borrowing has been encouraged by the exemption of local government bonds from taxation and by the constitutional and legislative limitations on local taxation. Most of the loans have been floated for the purpose of highway and school building construction. Although the per capita indebtedness is not abnormally high, the fact that the proceeds of the loans are used largely in non-revenue producing expenditures greatly endangers the balancing of local budgets in the future. The recent practise of issuing tax anticipation warrants carries with it grave dangers to the financial solvency of local governments. Most state constitutions contain provisions restricting the total amount of local indebtedness, which is usually fixed in some relation to assessed valuation of property within the locality. Some states prescribe the purpose for which loans may be contracted; others limit the period of maturity; still others prescribe the submission of loan

projects to a popular referendum. Although limitation of indebtedness is a step in the proper direction, constitutional restrictions are found to be too rigid and expert opinion favors legislative or administrative regulation as the more flexible form of control.

The administrative aspects of local are similar to those of national finance. In most countries local authorities have adopted some form of budgetary procedure, in which they frequently follow roughly the practises regulating the formulation, organization and execution of the national budget. In the United States the local budget system is far from satisfactory. The complicated and overlapping system of local administration prevents proper budgeting. The extent of central control over the fiscal administration of the local governments varies considerably from country to country. In Germany, France and other European countries control is quite rigid and effective. Even in the United States, where local governments have enjoyed the widest freedom from state supervision, most states have in the last fifty years adopted measures of control of varying rigidity and effectiveness. Nearly every state has some form of audit of local finance, but only a few states have a really effective system of control. The tendency, however, is everywhere unmistakably in the direction of subjecting local administration to a more effective supervision by central authorities.

PAUL HAENSEL

See: PUBLIC FINANCE; MUNICIPAL FINANCE; EXPENDITURES, PUBLIC; REVENUES, PUBLIC; PUBLIC DEBT; ACCOUNTS, PUBLIC; BUDGET; FINANCIAL ADMINISTRATION; LOCAL GOVERNMENT; COUNTY GOVERNMENT, UNITED STATES; COUNTY COUNCILS; ADMINISTRATIVE AREAS; GENERAL PROPERTY TAX; HOUSE AND BUILDING TAXES; PROPERTY TAXES; LAND TAXATION; SINGLE TAX; SPECIAL ASSESSMENTS; GOVERNMENT OWNERSHIP; MONOPOLIES, PUBLIC; EDUCATION, section on EDUCATIONAL FINANCE; GRANTS-IN-AID.

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LOCAL GOVERNMENT. In general local government may be said to involve the conception of a territorial, non-sovereign community possessing the legal right and the necessary organization to regulate its own affairs. This in turn presupposes the existence of a local authority with power to act independently of external control as well as the participation of the local community in the administration of its own affairs. The extent to which these elements are present must in all cases be a question of degree. For there is inevitably an ultimate limit to the freedom of action of the local authority, as otherwise it would occupy the position of a sovereign state; while it is likewise obviously impossible for all the citizens to participate at all times in the acts of the local authority. It should also be borne in mind that insistence on modern electoral systems and decision by majority vote as the only valid criteria of local autonomy would exclude many significant phenomena, such as the Indian village, where decision goes by the general sense of the community.

The familiar distinction between states, such as France, in which the organs of local government were created by and are subordinate to the central government and those, such as England, where local government preceded the central power is of less importance than is generally supposed. For in the older European countries central and local institutions have usually interacted over a long period of time; and in the process both have been developed. Furthermore local autonomy has never been secure from infringement by the mere fact that the organs of local government preceded in point of time the rise of the central power; while, on the other hand, in some of the newer countries outside Europe local authorities enjoy remarkable freedom despite the recency of their creation.

In England the actual origins of local government are unknown. Township and hundred and shire go back to the days before King Alfred, at least five hundred years before the arrival of the central administration in the twelfth century. The county is a feudal or prefeudal unit, the parish an ecclesiastical unit of great age, the borough a product of the middle ages. The ancient boroughs managed from an early date to establish some kind of local council and obtained various rights, privileges, immunities and franchises from the king or the local lord, generally acquired in exchange for money payments and usually embodied in a charter. In the counties, however, the only regular form of government until the end of the nineteenth century consisted of centrally appointed officers, such as the sheriff, the lord lieutenant and the justices of the peace. Practically all the county officers were subject to appointment by the crown, although since Tudor times justices have been selected from local men. Although organized primarily for judicial purposes these justices performed also a number of administrative and legislative functions and were always subject to the control of the King's Bench.

By the time of the popular reform movements of the nineteenth century the government of the towns, for long left virtually unsupervised by the central government, had in some places fallen into decay and in others was struggling with obsolete forms to satisfy the needs of growing industrial communities. Three years after the Reform Act of 1832 the first Municipal Corporations Act reconstituted the boroughs on new and uniform lines. The previous year had seen the reorganization of the poor law and the establishment of the elective boards of guardians who were henceforth to be responsible for its administration. During the next half century various ad hoc elective or appointive boards, such as highway, sanitary and education boards, were set up, each confined in its scope and purpose to a prescribed statutory function. In the last quarter of the century these boards were swept away and replaced by local councils possessing general powers. Thus in 1888, four years after the third Reform Act, the Local Government Act set up a county council in every administrative county; in 1894 a further statute initiated the urban district councils, rural district councils and parish councils. In 1929 the poor law authorities after a separate existence of three and a quarter centuries were merged in the general local authorities. In England more than in any other leading country local history and spontaneous local growth have determined the shapes and sizes of the various areas, but Parliament has formulated the type and structure and functions of the authorities which administer those areas.

The administration of Gaul under the Roman Empire permitted at first a considerable degree of municipal autonomy but this developed later into bureaucratic centralization. As a result of the weakening of the power of the central government of France under feudalism the towns

acquired new liberties and privileges by agreement with the feudal lords. When the royal power began to gain ascendancy over the great lords, the centralizing tendency started afresh; and from the fourteenth century the autonomy of the chartered towns was gradually extinguished. The culminating point was reached under Louis XIV and Richelieu, who placed intendants by the side of the old provincial governors to act as agents of the crown. In the *pays d'élection*, which constituted about two thirds of the country, the intendant was in complete control and all power, including that of taxation, was gradually drawn into his hands. In the towns and communes there was a confused mass of authorities, formerly elective but by the seventeenth century largely hereditary and purchasable.

The Constituent Assembly in 1789 abolished the intendants, swept away the old provinces and created eighty-six departments, each presided over by a prefect; the disorderly array of cities, boroughs, towns and villages was replaced by the universal commune—in accordance with the principle of equality, which was considered applicable to local authorities no less than to individuals—administered by an executive board not subject to control or dissolution by the central government. These boards came into frequent conflict with the central power and after numerous unsatisfactory experiments the centralized system was readopted under the Directory and Napoleon. By the side of the nominated deliberative authorities were placed executive officials—prefects, subprefects and mayors—also nominated by the emperor and responsible to him. In spite of various subsequent innovations, such as the introduction of popularly elected municipal councils, the French system of local government, even to the present day, may be regarded as the creation of Napoleon and more remotely of Richelieu. The influence of the French system has been immense although not continuous, not only in the smaller neighboring countries such as Belgium but in the larger states such as Italy, Japan and to some extent Germany.

The history of the German cities goes back to the time when the Roman camps and colonies on the rivers of Germany formed the nuclei of towns. During the later Middle Ages they attained a position of unrivaled freedom and power, and during the twelfth and thirteenth centuries their prestige and autonomous status entitled them to be regarded almost as city-states. From the thirteenth century until the rise of princely absolutism in the seventeenth powerful leagues of towns were formed for political, economic and military purposes, such as the Swabian league in south Germany, the League of Rhenish towns and the famous Hanseatic League, which included about ninety ports and towns in Germany, Sweden and the Netherlands. The Thirty Years' War (1618–48) was disastrous to many of the German towns, and they were further weakened in their powers of self-government by the conflict which developed during the seventeenth and eighteenth centuries between the small oligarchical family groups into whose hands the city government had fallen and the vocational guilds whose growing strength led them to demand a share in municipal administration. The absolutism of this period was most pronounced in Prussia under the Hohenzollerns; the avowed policy of Frederick William I was to appoint mayors who were completely subservient to the royal will.

The Prussian Municipal Ordinance of 1808, embodying the liberal reform program of Baron vom Stein, abolished election by guilds and corporations and established a popular assembly to elect the town council, which was to "control the entire administration of the municipality in all its branches." The executive was to be elected and controlled by the council, although in the large cities the burgomaster was to be nominated by the crown from a list submitted by the council. Police functions were withheld from the local authorities, although they might be devolved by the state on the local executive. For the next fifty years the history of municipal government in Germany consisted in the working out of the Stein reforms in Prussia and their adaptation to the needs of other leading German states. Retarded by the conservative reaction following 1830 and advanced by the aggressive liberalism of 1848, the movement for responsible local autonomy eventuated in the comparatively reactionary code of 1853, which subordinated the council to the executive, reclaimed for the state government the control that it had given up half a century earlier and replaced the secret and equal franchise by a three-class system of voting based on incomes. But one very important concession to local autonomy was the power conferred on local authorities to do whatever they might consider necessary for the welfare of the city. In this way there arose the practise of granting to German cities general powers to carry out anything not contrary to the law of the land. At the same time the code provided that the sanction of the superior authorities would in most

cases be required. The enactment of the republican constitution at Weimar in 1919 did not alter essentially the relation of the states to the municipalities, although in certain fundamental respects, as, for example, with regard to finance, it strengthened the national government to the detriment of the states and the municipalities. Most of the separate states reorganized their systems of local government between 1919 and 1924.

Several of the divisions within each state in Germany, such as the province, the rural circle (*Landkreis*) or town circle (*Stadtkreis*) and the commune (*Stadtgemeinde* or *Landgemeinde*), serve both as areas for the deconcentrated administration of state functions by officers and bodies directly responsible to the state and as areas of self-government by elected local authorities. There are in this way two distinct systems existing side by side. A "central" service in Prussia as in France is usually administered by a territorial servant or delegate of the responsible ministry. This may be an official, such as the *Regierungsrat*; a mixture of officials and laymen selected by local authorities and approved by the central government; or as a third alternative the locally elected authority acting as agent (the *Landrat* and *Kreisausschuss*). The local state officials exercise police functions, which in Germany include matters relating to public order and safety, the enforcement of the public health code and the building laws. The state control over local authorities may be exercised by two or three grades of supervisory authorities in addition to the state ministries.

There is much diversity in the various systems of local government prevailing in Germany, and at least half a dozen distinct types can be distinguished. But in nearly all of them the outstanding characteristics are, first, the existence of both a representative or deliberative body and a separate executive organ and, second, the predominant position occupied by the burgomaster, who is not only the chief of the executive but also frequently the president of the deliberative or legislative council. The burgomaster has always held a commanding position. He is a salaried official appointed by the local authority for a long term of years or for life, whose function it is to control and direct the action of the locally elected council. He is at once a state official and a municipal officer.

In Russia traces of a rudimentary form of local government are to be found as far back as the sixteenth century in the meetings of the landed gentry in garrison centers to elect town commanders and assessment officers. The gentry in each province became in this way a sort of county corporation. Other groups were formed for suppressing highwaymen and robbers, the elders being elected by popular assemblies drawn from all classes. Officers were also elected for fiscal administration. All this machinery was used by the state for its own purposes to such an extent that its operation came to be regarded as a burden rather than a privilege. In the seventeenth century, when Russia was being reconstructed by the early Romanovs, the local elective system broke down and was superseded by a centralized administration under commanders responsible to Moscow. But the remnants of self-government persisted, particularly in the village communities of the serfs (*see* VILLAGE COMMUNITY), and at the end of the century the towns were granted powers of municipal government which were placed in the hands of the upper merchant class. In 1775 under Catherine II the gentry were organized to participate in provincial government and were formed into a closed hereditary order with corporate rights. A subsequent development made the government of each province the joint business of the imperial official and the elected representative.

The most striking change in prerevolutionary Russia took place in 1864, when Alexander II introduced a large scheme of local government reform as a liberal reaction against his father's autocratic rule. The zemstvo act provided for the establishment of provincial and district zemstvos based on popular election in some thirty-four provinces. They were given extensive duties in regard to such matters as poor relief, highway maintenance, hospitals and public health, the promotion of education and agriculture. The civil parish (*volost*), a communal unit which is thought to be traceable to the mediaeval period, was revived for administrative and judicial purposes on an exclusively peasant basis.

These local government reforms in Russia, like the Stein reforms in Prussia, were essentially connected with the emancipation of the serfs. It was no mere chance that only three days after the signing of the Emancipation Manifesto of 1861 a commission was set up at St. Petersburg to work out a scheme of rural local government. The rule of the feudal lord had been abolished and a system of civil administration was required to replace it. The liberated serf was now a citizen and was entitled as such to participate in the government of his locality. The zemstvo movement became the field of a long and bitter con-

flict between the reactionary government bureaucrats, the believers in absolute monarchy and the serfless landlords on the one hand and the liberal democrats who desired to promote political progress on the other. The popular basis of the zemstvo was weakened in 1890 by the introduction of the class principle of representation. Every event of national importance, such as the revolutionary outbreak of 1905, the Russo-Japanese War and the World War, was significantly reflected in the status and progress of the zemstvos.

The introduction of the soviet (*q.v.*) technique by the revolutionary government of 1917 transformed the administrative as well as the legislative machinery of Russia. The basic unit of the highly centralized hierarchy of soviets was the functional economic group, limited to workers or peasants but otherwise popular in its electoral and deliberative procedure. Although the older administrative areas associated with the zemstvo regime have been found a convenient apparatus in a period of transition, the attempt is being made to substitute gradually a new system of regional division better adapted to the realities of economic geography. During the early years of the transition period the urban local units were the dynamic factors in the consolidation of proletarian power, but with the growing realization that many of the crucial questions involved in economic planning centered in the rural areas attention began to be directed to the problems of the local village. The long established tradition of local communal deliberation has proved itself capable, with a slight leavening of active supervision by resident members of the Communist party, of removing from the shoulders of the overburdened bureaucracy many of the day to day problems of local administration, particularly in the field of agricultural production.

The tradition of local government has been especially strong in Hungary and Bulgaria despite the fact that both suffered for a number of centuries the autocratic domination of Turkey. The tradition of a vigorous and to a unique degree independent county government controlled and administered in the interests of the military—and later agrarian—nobility is traceable to the times of the first Hungarian king, although it did not become firmly established until the fifteenth century. During the succeeding centuries the former vigor of the central government was extinguished, at the hands first of the Turks and then of the Austrians; but the sense of Hungarian integrity and of administrative continuity persisted, on occasion flaring up into aggressive nationalistic movements, in the county assembly (*congregatio*) of the "aristocratic republics," in the county courts and among county administrative officials, such as the sheriff (*foïspan*). As a reflection of the democratic movements of the nineteenth century the county organization was widened, representation being granted to the newly enfranchised peasant communes. In 1876 and still further in 1891 the autonomy of the counties was restricted by the delegation of new powers to crown officials, while in the latter year the county was divided into circuits presided over by justices of the peace. The traditional administration of the Bulgarian commune derived from the Slav rural organization. Even under the Turkish conquest various towns and villages obtained privileges, such as the right to elect their own mayors and elders, which were not infringed until the eighteenth century. Provided the requisite contingents for the Turkish army and other forms of tribute were duly furnished, an almost complete measure of self-government was accorded to the localities, a tradition which has persisted with some modifications down to the modern period of centralization.

The tradition of local government in Spain is intimately bound up with the separatism which is such a marked characteristic of Spanish administrative development (*see* REGIONALISM) and with the struggles of the town (*see* MUNICIPAL GOVERNMENT) and leagues of towns (*hermandades*) to acquire privileges (*fueros*) during the late mediaeval period and to preserve them against the encroachments of the later centralizing monarchs. The essentially municipal character of the local government movement in Spain is reflected in the early administrative problems of the Spanish colonies in America. In contrast to the English and the French the Spanish colonizers organized the administrative areas around municipalities. Both in the early colonial period and in the later democratic movements of the nineteenth century—in the mother country as well as in the colonies—the struggle for the acquisition and preservation of local liberties was the function to a striking degree of the towns.

In the English as well as in the Spanish areas of the New World the early forms of local government were largely determined by the influence of the mother country. In the United States some twenty-four municipal charters were granted during the colonial period (1641–1765), not all of which, however, were effective. The charter in colonial times emanated from the

crown and issued through its representative in the colony, the governor or the proprietor. The early colonial charters followed closely the English model, and even after the revolution the charters still bore a strong resemblance to the original type. During the colonial period there was little opportunity for extensive development in this field. The English settlers brought with them ready made conceptions of law and government, and from the beginning the new municipal corporations, which reproduced the leading features of the English model regardless of their suitability, lacked vigor. The insistence on corporate rights, corporate property and corporate privileges was transferred to American soil at a time when their usefulness had already passed in England. The idea of the public welfare had little place in English ideas of local government during the colonial era. The American municipalities declined rapidly in quality and attainment during the eighteenth century.

In 1796 Philadelphia adopted a form of city government whose principles closely resembled those on which the state and federal governments were organized. It consisted of a bicameral system with select and common councils chosen for three years and one year respectively by the electors of representatives. The systems of checks and balances and the principle of the separation of powers were embodied in the new constitution. A similar constitutional tendency was followed in many other cities.

One of the main effects of the revolution was that municipal charters were no longer granted by the governor but by the state legislature. The charter, in short, became a statute. This entirely modified the relations between municipality and state. Under the old regime the cities were entirely free from legislative interference, whereas they now fell under the complete domination of the state legislature. In consequence municipal autonomy was virtually destroyed during the second half of the nineteenth century. Little progress was made in American city government until the introduction of the commission plan in Galveston in 1901 started a movement for the abolition of the separation of powers in local government and demonstrated the advantages of a strong executive. At the same time a number of states began to confer home rule powers on the cities, thereby relieving them of subordination to the state legislature.

The county is the most common area of local government in the United States, and here again the English ancestry can be traced. Most of the American colonies had been divided into counties before the revolution, and toward the end of the seventeenth century elected boards or justices of the peace carried on local administration in a manner not unlike that prevailing in England. After the Civil War counties were created throughout the country and new responsibilities placed on their shoulders. The old system of elected officials still prevails as a rule in the counties and no attempt has been made to establish adequate representative councils.

The English influence has also been important in the self-governing dominions of the British Empire, with the notable exception of the Union of South Africa, which has as yet failed to evolve a satisfactory form of self-government for other than municipal areas. In Canada the first city charters were granted to Quebec and Montreal in 1832. Municipalities were created throughout Lower Canada in 1854. Each of the separate provinces of the dominion has power to organize within its area whatever system of local government it chooses, and most of the municipal authorities have been constituted by the provinces during the last fifty years. They are founded for the most part on English principles with certain modifications borrowed from the United States.

In Australia again the colonial period has left a lasting mark. The early settlers took possession of the entire country, which was then administered by a governor in the name of the king. It was later divided into a number of colonies, each with a separate government exercising authority throughout its territory. No organ of local government was evolved spontaneously without reference to the central government of the colony. Hence every local authority owes its existence to imperial or colonial legislation; and the governor in council of each state of the commonwealth still possesses large powers of supervision and control over the local administration, which he exercises on the recommendation of the various departments of state. The urban local government areas consist of cities, towns, municipalities or boroughs; the rural of shires or districts.

Instructions sent in 1840 by the British government to the first lieutenant governor of New Zealand authorized him to divide the colony into districts, counties, hundreds, towns, townships and parishes, but this power was not utilized to any extent. Five years later the Public Roads and Works Ordinance enabled the settlers in any district to cooperate for purposes of local administration. The Municipal Corporations Act of 1867 permitted new districts to be incorporated on

the petition of one hundred ratepayers, if certain conditions relating to the area were fulfilled. The most important year in the history of local government in New Zealand was 1876, for the provinces were then abolished and the country was divided into sixty-three counties, all but six of which being placed under the control of an elected chairman and council. Another Municipal Corporations Act passed in the same year enabled all localities fulfilling specified requirements to be constituted boroughs. These enactments have long been repealed, but the broad structure of the present system is based upon them. A statute of 1882 authorized the formation within the counties of town districts, which are subject to the control of the county council.

In the East the most interesting phenomena in the sphere of local government are to be found in India. In ancient India the Sabhā, an essentially communal assembly restricted almost entirely to Brahmans, constituted the supreme governing body of the village; while the Ūrār, a territorial assembly less exclusive as to caste and creed, was carried to a further stage of development in the Nāṭṭār, or district assembly; there were still larger groupings of the same kind. Each city was administered by a body called Nagarattār, the assembly of the nagara, or city. The arts and crafts had their own vocational guilds, but for civic purposes there existed many composite and federal bodies in which Brahmans, artisans and merchants met together.

The most important survival of the traditional organization is the panchayat, or village council. The term panchayat denotes either a general meeting of the inhabitants or a select committee, a council of village elders, chosen from among them. The village communities have always had their staff of functionaries, such as the headman, who collects revenues, settles disputes and exercises general superintendence over the affairs of the village; the accountant; the watchman; the schoolmaster; and so forth. Some of these officers have become in British India the servants of the government rather than officers of the village community, and this may be one cause of the decline of the panchayat. In many of the half million or more villages of British India the inhabitants undertake for themselves the management of private schools, the maintenance of tanks and wells, the settlement of small disputes, the administration of village credit societies, the distribution of water in irrigated lands and other services which concern persons of all castes and creeds.

It was not until the middle of the nineteenth century that the elective principle was introduced in the presidency cities of Calcutta, Bombay and Madras. Between 1842 and 1862 municipal institutions were established by legislation in other towns, either at the option of the inhabitants or later at the instance of the provincial governments. As a result of the efforts of Lord Mayo in 1870 and of Lord Ripon in 1882 to further the participation of Indians in municipal administration there was passed a series of provincial acts providing for the election of a larger Indian element to the local authorities, and at the same time a pronounced impetus was given to the improvement of rural local government. The typical form consisted at first of a rural board exercising power over a large area; a proportion of the members were elected by the local taxpayers and the board was presided over by the district officer. The domination of the local board by this officer, who is the servant of the central government, proved a definite obstacle in the development of local government in any real sense. After the passing of the Government of India Act of 1919 new provincial legislatures were constituted on a more autonomous basis and local government affairs were transferred to ministers responsible to those legislatures. As a result the district officer was replaced on the rural board by an elective chairman.

The district board is now the most important unit in the country districts. It has an elective majority based on a franchise of 3.2 percent of the population. In Bombay and the United Provinces the Moslem electorates are provided with separate communal representation; while in other areas representation is secured for minorities by the provincial government's power of nomination. An attempt has been made within recent years to revive and strengthen the village panchayats, which in most provinces are now almost entirely elective. Local boards have also been set up in most provinces as subordinate agents of the rural board to administer parts of the district.

In Japan the reform of local government in the nineteenth century was connected as in Prussia and Russia with the abolition of feudalism. Prior to the Meiji era (1867–1912) there existed nothing in the way of municipal institutions. Each feudal clan had certain officials who carried on local administration, and the shogunate governed. Feudalism was abolished in 1871. The renaissance which occurred during the Meiji period resulted, so far as political affairs were

concerned, in the setting up of a strong central government. In 1873 there took place the establishment of the Department of Home Affairs, which has ever since exercised a dominant control over local government; this was followed by a movement directed toward the standardization of municipal institutions and toward the creation of somewhat more democratic forms of authority. Governors were placed in charge of the seaports (*fu*) and the former fiefs (*ken*), and a brief statement was issued by the central government as to the objects to be pursued by local administrators. In 1878 provincial assemblies intended to serve as forerunners to a national assembly were set up in the *fu* and *ken*. Two years later assemblies were established in the cities, towns and villages, into which the older regional areas had been reorganized and classified. It must be noted, however, that in Japan popular representatives have always occupied an advisory or consultative position and have never acquired positive power over the bureaucracy.

In China as in India there existed until very recent times that "aloofness of society from the state" which made it possible for the everyday life of the people to proceed relatively undisturbed by violent changes of government or by the rise and fall of dynasties. The emperor ruled, but he did not pretend to govern. Such government as has existed in China has been carried on in the city and village community. Judged by western standards, however, the Chinese are not accustomed to expect very much government except in the larger cities, although both the right and the opportunity of local self-government form essential parts of the Confucian philosophy.

The twenty-two vast provinces of the Chinese Empire were ruled by imperial governors or viceroys together with a few subordinate officials. The central government had in theory absolute power. In practise its activities consisted largely in controlling the appointment—although to only a small extent the subsequent action—of the officials occupying the higher provincial, prefectural and district posts; the holding of state examinations for the civil service; the collection of taxes and the maintenance of armies. At no time was the central control effective.

Each province was divided for administrative purposes into prefectures (*fu*) presided over by prefects, which were in turn divided into districts (*hsien*) in the charge of magistrates. The *hsien*, comprising a walled city—or in the case of many provincial capitals the half of a walled city—with the adjacent country, was the civic, political, judicial and fiscal unit. The district magistrate in charge was assisted by treasurers, collectors, constables and other officials. The magistrate himself was the agent of the provincial and imperial governments for certain purposes and was personally responsible. He exercised control over every conceivable subject of local administration from famine relief to the care of temples.

The *hsien* commonly contained a large number of villages which had no legal or constitutional status whatever but which nevertheless exercised considerable powers of local government, carried out through the village elders on a patriarchal basis. An official (*tipao*) was nominated from among the elders to represent the villagers in relation to the *hsien* and other superior authorities. This system, built up through long ages under the Chinese monarchy, was left virtually untouched by the revolution which established the Chinese Republic in 1911.

The survey of the rise and in some cases the fall of local government in the main countries of the world indicates the difficulty of generalizing about phenomena so complex, so diverse, so rooted in the history, the stage of development, the political aptitude and the social characteristics of the various peoples. Two general conclusions, however, emerge as valid. First, local government is obviously the principal arena in which the conflicting principles of centralization and decentralization struggle for supremacy. Where the central government is essentially weak, no matter how absolute its theoretical or legal rights, local administration is bound to prosper, if for no other reason than that the practical needs of the people must be met. Second, every nation which has become a modern state has without exception been compelled during its transition to establish or to reform its institutions of local government.

The modern state is often faced during the course of its evolution with conflicting tendencies. On the one hand, the desire to strengthen the central power and to promote national ends rather than local interests frequently leads, as in France and Italy, to an extreme restriction of local autonomy and a development of the deconcentrated type of local administration through central officials. On the other hand, the vast increase in the scope of governmental functions makes central governments aware of the need to devolve both duties and responsibilities to local organs. This decentralizing tendency is often reenforced by a recognition of the vital edu-

cative effect on the people of representative local institutions. In England, India, Prussia, Japan, the United States and elsewhere the course of events has shown the impossibility of introducing or maintaining an effective and healthy system of democratic government in nation or state or province unless the larger organs of government are supported by healthy and democratic local councils.

An accurate gauge of the extent to which local autonomy prevails in a country is the degree to which local administration tends toward the decentralized or the deconcentrated type. It is here that a true distinction may be found between the local government systems of the English variety and those founded on the French or German model. In France the department is an area of both deconcentrated central administration and local government. The prefect is appointed by the government and is the local agent of all the central ministries; he is in fact the principal local servant of the central power. He exercises large powers of supervision over communes and mayors. He controls the police and appoints all the school teachers. The representative body of the department, the *conseil-général*, is relatively unimportant. In the commune the mayor serves in a double capacity. He is at once the agent of the central government and the executive head of the municipality. He is elected by the council from among their members, but he can be suspended by the prefect for one month or by the minister of the interior for three months or be dismissed by decree. The communal budget is proposed by the mayor and must be approved by the municipal council, but the final decision is with the prefect or in large towns with the minister of the interior. The prefect may insert additional items of expenditure in both the communal and the departmental budgets. The most striking illustration of the prefectural dominance is the power of the prefect to suspend the municipal council. Education in France is completely under the control of the national Ministry of Public Instruction; the upkeep of the main highways is also centralized.

The German conception of local government consists to a large extent in administration by a highly qualified professional officer checked by but essentially independent of an elective legislative or deliberative assembly and subject to its financial control. This contrasts sharply with the English system, where the fundamental principle consists in the supremacy of the elective council and the complete subordination of the municipal officers to its decisions. Municipal administration in England is carried out by means of a series of committees of the council, each of which deals with a particular subject, such as education, public health and so forth, and the membership of which consists either wholly or mainly of councilors. In this way all members of the council, although unpaid laymen, participate in actual administration. In Great Britain again there is no deconcentrated control by the state. The supervision or control by the central government is carried out directly by the central ministries, and no local authority or municipal officer or mayor is the agent of the central power.

As regards central control England may be said to occupy a position midway between the authoritarianism of the French system and the extreme freedom enjoyed by American municipalities, especially in the home rule states. The relations between central and local government in England are complex. The central government exercises considerable influence and sometimes direct power through its ability to withhold national grants-in-aid of local expenditure; through the system of district audit of local accounts; and by such means as the approval of by-laws, the inspection of schools and police forces, the right to approve and modify local schemes for housing, town planning, hospital provision and so on. There is no absolute power of general control, however, except perhaps in the case of the poor law. In the United States the separate states have the constitutional right to regulate local government to any extent they desire. But in practise this right is exercised to a relatively small degree and local authorities are perhaps freer from superior control than in any other country. Even where subventions are paid by the state in aid of particular municipal services, such as education, inspection or supervision by the state does not commonly occur. The state is regarded as occupying an advisory rather than a supervisory position. The county, however, occupies a dual position in the United States not unlike that filled by certain areas of administration in Germany. It is at once a subdivision of the state for the enforcement of state laws and a district for the purposes of local administration. With comparatively few exceptions county officers are popularly elected. The principle of directly electing executive municipal officials is peculiar to the United States. It arises partly from a desire to separate

powers, partly from the theory of a system of checks and balances carried into the sphere of local government and partly from Jeffersonian ideas of democracy. Nevertheless, during the past two decades the rise of the city manager (*q.v.*) plan has been a most conspicuous feature of local government in the United States.

In Italy, which after its unification had adopted the main outlines of the French system, local autonomy has been almost entirely abolished by the Fascist regime. The responsible authority in each commune, except Rome and Naples, is the *podestà*, an unpaid officer appointed for five years by royal decree. The *podestà* exercises all the municipal functions which formerly devolved upon the mayor, the executive committee and the communal council. He is the only executive authority and appoints all the officers of the commune. His decisions are subject to the control of the provincial prefect.

In the larger communes the *podestà* is assisted by a council appointed by the prefect, two thirds of the members of which are selected from panels submitted by local syndicates and recognized economic organizations. The council is endowed with advisory powers only; it is summoned by the *podestà* at his discretion and expresses opinion on matters submitted to it by him; in regard to certain questions, however, such as the budget estimates, loans and taxation, the opinion of the council must be asked. If there is a difference of opinion between the *podestà* and the council, the *podestà* decides as he thinks fit. In the Italian provinces a system resembling the French prefectorial scheme is in existence, while in Rome a governor and in Naples a royal commissioner replaces the *podestà*. The governor is supported by a body of rectors appointed by the minister of the interior, each of whom is responsible for a specific branch of administration.

The various systems of local government may be divided into those in which general powers are conferred on the local unit and those in which only specific powers are granted. In France the communal council possesses legal power to embark on any activity considered desirable for the welfare of the locality, and in Germany a similar general power has been possessed by local authorities in most states since the days of the Prussian municipal code of 1853. In England, on the contrary, local authorities are permitted to perform only those functions which they have been expressly authorized to perform by public or private act of Parliament, royal charter, statutory rule, provisional order or other legal document emanating from the king in Parliament or the central executive. This principle of confining the activities of local authorities to enumerated functions is judicially enforced by the legal doctrine of *ultra vires*. In the United States the municipalities in the home rule states have general powers within the limits set by the state constitutions; elsewhere the doctrine of *ultra vires* applies.

It is obvious that an accurate understanding of the powers possessed by local authorities can be gained only by considering the general context of central control exercised over local authorities. The constitutional freedom of the French commune is severely limited by the power of the prefect over finance, by the power to suspend the council and by other restrictive factors; while in Germany the reservation by the state of police functions and the requirement that local authorities must obtain state approval for many of their proposals circumscribe in practise the legal power of the municipal councils. It is worth noting that countries frequently change from one system to the other and sometimes apply both simultaneously. Thus the doctrine of *ultra vires* did not exist in England before the 1840's; Japan changed deliberately from the system of general to that of enumerated powers; while in Germany the powers of local authorities higher than the commune are specified in order to avoid conflict with the unlimited powers of the latter. But even allowing for all modifying influences, it may be asserted that in England, the United States, Australia, Canada and New Zealand reliance is placed on legislative and judicial control, whereas in France, Germany, Italy and Japan the emphasis is on administrative supervision by higher authorities. The private act of Parliament whereby the legislature confers powers on a particular locality has been extensively employed in England but appears to be unknown elsewhere. It is unconstitutional in the United States, although a state legislature can legislate for a "class" of local authority of which only one example exists within the jurisdiction.

The actual functions of local government are most varied. There are certain services, such as water supply, sanitation, poor relief, the upkeep of at least the minor roads, which are everywhere in the hands of local authorities. On the other hand, whereas education is a national service in

France, in the United States it is regarded as a peculiarly local function requiring special education authorities distinct from the general municipal bodies. Similarly, the control of the police force is a jealously guarded preserve of the English boroughs, while in Germany it is the concern of the state. Two distinct trends may, however, be emphasized. First, the scope of municipal activity has been greatly widened in recent times in regulating the conduct of citizens and more especially in the direction of providing services for the people, such as housing accommodation for the poorer classes, the operation of gas and electric supply utilities, the running of transport services and other forms of so-called municipal trading. In the second place, the growth of these and other services has had the effect of making local government far more important than central government in the daily life of the average citizen. The services which touch family and home life most intimately, such as the provision of health services, maternity and child welfare clinics, playgrounds and parks, general and technical education, the supply of water and gas and electricity, even the provision of the dwelling itself—these are tending more and more to be the affair of the local authority.

The interest shown by citizens in the work of the local council and the caliber of those who serve on it manifest wide variations. A very high point of excellence is reached in Switzerland, especially in the German cantons, where local self-government is perhaps more truly democratic than in any other country. In Germany and in England also, especially in the towns, civic feeling of a high order is to be found as well as in Holland and the Scandinavian countries. In the United States an exceptionally mobile population, a vast immigrant influx, a mixture of races and cultures and a great concentration on economic activity have proved, with a few notable exceptions, unfavorable to the development of any considerable popular interest in local government and this in turn has led to corruption in municipal politics.

The degree to which local democracy exists depends to no small extent on the effectiveness of the municipal organization, and this again is related to the constitutional structure. It is impossible to describe here all the variations in the size, shape and character of the areas of local government in the different countries of the world. Their irregularity and irrationality are conspicuous in an old country, such as England, where the administrative divisions are to a large extent a heritage of past ages and where the determining factors are irrelevant to modern conditions. Their uniformity is most noticeable in new territory, such as the west and middle west of the United States, where the "congressional townships" consist of areas six miles square. But neither irregularity nor uniformity is the test of suitability. In nearly all the countries where extensive industrial development has taken or is taking place the areas of local government are proving too small for optimum efficiency. As a result of the technological revolution the areas of local government are often too small to include both the place of work and the place of residence of great masses of the population and have produced serious administrative and financial problems in such countries as Germany, France, England and the United States. At the same time new municipal services, such as town and country planning, public health functions calling for highly specialized experts and institutions and public utility undertakings requiring large scale operation, have created a similar demand for enlarged areas of jurisdiction. In nearly all the leading countries the areas of local government were determined before the advent of modern improvements in communication; and in none of them has there been any systematic attempt to bring the size and shape of the areas into accord with the trend of social and economic evolution. The result is that almost every country contains large numbers of local governing authorities whose areas are too small, too sparsely populated and too poor to respond adequately to the demands which are made upon them. The problem of areas is complicated by the dogged insistence with which ineffective local authorities claim the right to continue in existence.

Another phase of the problem of local government is the degree of simplicity which is to be found in the various systems. In the United States, Germany, England (outside the county boroughs) and elsewhere there are several layers or levels of administrative authority having jurisdiction over the same or overlapping local territory; whereas in Australia, for example, there is one and only one local authority in any area. The complexity resulting from overlapping local authorities tends to confuse the public mind and thereby to weaken public interest in municipal affairs; at the same time it diminishes the efficiency and economy with which local administration as a whole can be carried on.

The tendency toward increased central con-

trol, so marked at the present time, has sprung from several causes. The enlarged scope and importance of municipal functions have stimulated in central or state governments a sense of responsibility for their proper execution or at least their performance. The huge increase in municipal expenditures has made it necessary for grants or subventions to be made from national and state funds. The world wide economic depression and the acute financial situation existing in many countries have given the activities of local authorities in regard to poor relief and the promotion of public works a national importance which they never before possessed and which no central government can ignore. The inadequacy of many areas of local government has not infrequently compelled the intervention of the central government. For these and cognate reasons the power of the German *Reich* has increased in comparison with that of the municipalities and of the states; in England the central departments and especially the Ministry of Health have acquired a degree of control and influence over local authorities far in excess of any hitherto known; and even in the United States there is without doubt an extension in the power of the state governments over the local authorities.

Despite this tendency local authorities have greater opportunities today than ever before. If the powers of the central governments are increasing, so are the powers of the local councils. With the general extension in the scope of municipal government there is a growing recognition of the necessity for a well trained professional service to carry the burden of local administration. The elected councilor is ceasing to believe that he can govern wisely or efficiently without the aid of the expert official. Emphasis is therefore being placed in many countries on the need for improvement in the methods of recruitment, education, training, pay, status, conditions of service and ability of local government officers. At the Fifth International Congress of Local Authorities held in London in 1932 one of the two subjects tabled for discussion was the training of local government officials.

One of the most difficult problems of local government is presented by the administration of the great metropolitan areas. Attempts to solve this problem are being made in a number of countries, and plans are being put forward to obtain a more effectively unified type of metropolitan government by such means as the federation of existing bodies, the creation of larger units or the setting up of ad hoc bodies to deal with particular services over the entire area. This question may serve as an interesting illustration of the way in which the same type of problem springs up in the field of local government in all countries which have reached approximately similar stages of economic and social development. The great diversity in the history and the character, the structure and the functions, of the various systems of local government is impressive, but equally so are the similarities of form and feature, of growth and decay and renewal, of problem and solution, to be observed among many unrelated sets of municipal institutions.

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See: GOVERNMENT; COUNTY GOVERNMENT, UNITED STATES; COUNTY COUNCILS; MUNICIPAL GOVERNMENT; MUNICIPAL CORPORATION; CITY MANAGER; VILLAGE COMMUNITY; COMMUNE, MEDIAEVAL; SOVIET; POLICE POWER; LOCAL FINANCE; GRANTS-IN-AID; CENTRALIZATION; DECENTRALIZATION; FEDERALISM; REGIONALISM; AUTONOMY; COUNTY-CITY CONSOLIDATION; ADMINISTRATION AREAS; METROPOLITAN AREAS; REGIONAL PLANNING; PARTIES, POLITICAL; MACHINE, POLITICAL; CORRUPTION, POLITICAL; SHERIFF; CORONER; JUSTICE OF THE PEACE; POOR LAWS.

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LOCAL OPTION. *See* PROHIBITION.

LOCALISM. *See* REGIONALISM.

LOCALIZATION OF INDUSTRY. *See* LOCATION OF INDUSTRY.

LOCATION OF INDUSTRY. The location of industry is bound up with geography as well as with economics, for geographical differences affect the life of man, while man in turn reacts upon and changes the surface of the earth. As long as the forms of economic life remained simple, a descriptive study of territories and states, such as that of Montesquieu, was sufficient and political economy could ignore the problems of spatial separation and distribution. It was not until the advent of a free dynamic system of economic arrangements that such questions attained any appreciable theoretical importance. Thünen could develop his theory of agricultural location, for example, only after the disappearance of the rigid three-field system of peasant economy. Industry too was for long almost as definitely restricted by historical factors. Throughout the mediaeval period handicraft was tolerated only in the towns. Home industries alone flourished in the rural districts, especially in mountainous regions where conditions for the development of agriculture were poor. In the mercantilistic period there were in addition direct attempts, particularly by Great Britain, to prevent the development in the colonies of manufactures other than those of local importance. These artificial limitations were superimposed upon natural obstacles to rational distribution of industry; in the North American colonies, for example, all industrial development was confined to the narrow coastal strip where the original settlement was concentrated. Complete freedom of movement for industry was effected everywhere at a rather late date. In Europe it was brought about by the abolition of the mediaeval economy, elsewhere by the collapse of the old colonial system. In new countries such as the United States the spread of settlements over the entire country was another prerequisite; only then was industry able, with the aid of the new technique of steam transportation, to exercise a free choice of location and to correct economic deficiencies in traditional locations.

Another reason for the neglect by early economists of the problems of location was their difficulty. It was not easy to integrate the differences of agricultural location into a causal explanation, and the variegated picture presented by industry was even more puzzling. While the question of the "natural" location of industry had been touched upon in passing by such writers as Sonnenfels and Büsch, the first broad treatment of the problem is found in Roscher's article, "Studien über die Naturgesetze, welche den zweckmässigen Standort der Industriezweige bestimmen" (in his *Ansichten der Volkswirtschaft aus dem geschichtlichen Standpunkte*, 2 vols., 3rd ed., Leipsic 1878, vol. ii, p. 1–100), which suffers, however, from the superficiality of theoretical discussion and the failure to synthesize the assembled mass of historical material. Roscher's analysis was supplemented in important particulars by the American E. A. Ross ("The Location of Industries" in *Quarterly Journal of Economics*, vol. x, 1895–96, p. 247–68) and by the Frenchman Maunier ("La dis-

tribution géographique des industries" in *Revue internationale de sociologie*, vol. xvi, 1908, p. 481–514). More important, however, was the fact that in the meantime the entire problem was approached quite differently by Launhardt in his mathematical study, "Die Bestimmung des zweckmässigsten Standortes einer gewerblichen Anlage" (in *Zeitschrift des Vereines deutscher Ingenieure*, vol. xxvi, 1882, cols. 105–16). Alfred Weber was the first to undertake to coordinate all these disparate efforts and to offer comprehensive treatment. The publication in 1909 of his *Reine Theorie des Standorts* gave rise to a theoretical discussion which has not yet abated and secured for the subject permanent importance in scientific literature. Although Weber never published the promised second part of his theory, which was to be "realistic," he edited a collection of studies of location of individual industries, and similar studies by other investigators followed. Weber's theory, unlike Thünen's, has not successfully met the test of subsequent criticism; it offered a powerful stimulus to further study rather than a definitive solution. It has been attacked from all angles, as by Engländer and particularly by Predöhl and Ritschl; but criticism has been constructive and has helped to clarify the outlines of a new and unified theory, in which there is no longer a distinction between the "pure" and the "realistic." These doctrines, moreover, were developed further in application to business economics and incorporated in practical economic disciplines. Especially in the United States, where the general theory has been developed but slightly, its implications have been reflected in studies of scientific marketing, such as W. Gerald Holmes' *Plant Location* (New York 1930).

While the doctrine of location has certain general aspects it is radically affected by an empirical distinction between those branches of production for which location can be chosen freely and those for which it is predetermined. In agriculture location is usually fixed; the factors of labor and capital must be adapted to the soil, and location governs production. In industry, on the other hand, location may be selected freely and land adapted to labor and capital; location is conditioned by the requirements of production. While it is important that the unity of the problem should not be overlooked, this basic difference renders inadvisable the formulation of a doctrine of location to apply uniformly to agriculture, industry and trade; attempts at the construction of such a unified theory have generally failed. More specifically, the peculiarities of industrial location cannot be set forth clearly within the framework of a general theory.

The factors peculiar to industrial location, which are exceedingly numerous, are not always apparent, for the historical circumstances which have conditioned the location of the older industries are in many cases difficult to ascertain. Effective location factors are therefore most clearly indicated when industries move. Of these one group require only brief mention because they create in industry a situation similar to that in agriculture. The location of mining enterprises is the clearest illustration of their operation. Industries depending on water whether for power or for other purposes, as in the case of certain chemical, paper and leather manufactures, are in an analogous position. Similarly the presence of facilities for drainage, often more important than adequate water supply, and such characteristics of certain manufacturing operations as noise and odor may definitely fix location. While such restrictive factors could be omitted from consideration, the theory of location of industry must encompass all others, for each specific factor can be assigned its proper place only when the entire complex has been outlined.

The most important of the numerous factors which affect the free choice of industrial location is, as in Thünen's doctrine of agricultural location, orientation toward the market to which the output of the plant must be delivered. Transportation costs thus incurred are determined on the one hand by the weight and bulk of the products and the distance over which they are transported and on the other by the scale of freight rates. None of these determinants is fixed. Progress has been made in lowering the weight of the transported commodities, in shortening the distance separating the plant from the market and above all in reducing freight rates. So long as only natural traffic routes were available, natural conditions occasioned marked differences in freight rates, considerably equalized, however, by local taxes and dues. Even at present natural conditions exercise an important influence on transportation costs, particularly in the case of natural routes of great capacity, such as the sea, large lakes and long inland waterways developed for navigation. On the whole, however, the railroad has emancipated transportation from the limitations of natural routes and made equally accessible out-

lying points in every direction, a condition previously unknown. While it reduced the significance of transportation facilities as a location factor, it has introduced railroad rate policy as an important device for encouraging or impeding migrations of industry. The advent of the automobile in recent years has further increased the accessibility of distant points and reduced the importance of distinctive locations; at the same time the automobile has virtually eliminated the differences between the use of the railway and of the highway and impaired the effectiveness of railroad rate manipulation for location policy purposes.

Next to the market the factors of production constitute a most important consideration in industrial location, more vital in industry than in agriculture. Among these, however, land is not of outstanding significance. In industry, as contrasted with trade, land rent is of immediate practical concern only when an enterprise is to be established or extended. While a rise in rent may drive industries from central locations in large cities to the suburbs, as a rule it merely supplements a trend toward change of location due to other causes. The production factors, labor and capital, exert much more influence upon industrial location. The bearing of labor on location is very involved; one must consider the local wage rates, expenditures enforced by social legislation, the productivity of labor in its quantitative and qualitative aspects as well as its tractability. The factor of capital presents still greater complications. In the case of fixed capital, interest, like rent, is of importance mainly in the establishment of new or in the enlargement of old plants. Although differences in interest rates are often decisive for the introduction of an industry into a foreign country they do not constitute a permanent influence, for the tendency toward equalization of prices of articles entering international trade extends also to interest rates. Working capital, comprising raw materials, fuel and similar goods continually used up and replaced, is of much greater importance than fixed capital. In the literature of the subject fuels are usually classed with raw materials, but they are in fact much more subject to technological innovations. In this connection two major changes should be noted: first, the substitution of coal for wood and the consequent movement of industry toward the coal regions; second, the change now in progress, the substitution of electricity for steam. Since electricity is by now available almost everywhere, the coal regions are largely ceasing to attract industry, a tendency which would be even more marked if coal were not also changing from a fuel to a raw material. The availability of power resources, which for long had been a prime consideration, is thus becoming almost negligible as a factor in location; this is perhaps the most far reaching change which has thus far taken place in the geographical distribution of industry.

Numerous factors of a non-economic character also affect location of industry. Of the geographic factors the most important is that of climate. Indeed Friedrich List regarded climate as the principal factor governing the distribution of industry; the temperate zone, he maintained, was the natural seat of machine industry, while the tropics were unsuited to manufacturing. Today it is known that man can lessen the effect of climatic differences; physical exertion entailed by work has been reduced, and tropical heat may now be mitigated with the aid of artificial ice and electric refrigeration. Furthermore natives of tropical countries have proved to be more educable than was formerly held possible. All sorts of industries, especially mines and iron foundries and textile manufactories using tropical fibers, have been established in the tropics. It cannot be denied, however, that while some climatic influences important in the industrial process, such as humidity, can be offset by artificial methods, climatic differences will always remain of consequence.

Racial differences, which are in part related to climate, are less important. The machine is becoming the common property of all peoples, and the handling of industrial apparatus has ceased to be the monopoly of a few nations; the old position of predominance is becoming confined more and more to the maintenance and improvement of equipment, although in this sphere the existing differences between peoples are insufficiently appreciated. National peculiarities of political organization also produce differences in institutional arrangements. Taxation, for example, is a factor affecting industrial location; where high taxes are not offset by corresponding advantages they cause eventually a shift in location.

In addition to these factors, which are beyond the power of any single individual, location is influenced by certain arbitrary choices. Inert obedience to custom, the all too human desire for comfort, the benefit expected from educational and recreational facilities, may override

the cold logic of strictly economic calculus. Again, for reasons of their own municipalities may attract industries by offering special privileges such as land grants or financial inducements. These are but instances of irregularities in location produced by arbitrary and accidental factors; their influence, however, tends to decline with the increasing displacement of private business by the corporation.

Once an enterprise has become established, the factors which influenced its location may lose their potency, although powerful forces of inertia may discourage change. The greater the fixed capital, for example, the more difficult is shift to other regions; in such a case a reduction in profits is usually considered the lesser of the two evils. Actual removals are thus rather infrequent, being caused usually by exhaustion of raw materials or by radical changes in the power economy. It is the new enterprises which usually become established in more favorable locations, thus pushing the older firms to the margin and bringing about their slow extinction. This is to be regarded as the normal type of industrial migration; it may of course be occasioned by changes in any of the factors which determine location, particularly the market, labor or raw materials.

Historically, industrial location with a view primarily to market proximity, which may be considered the original normal type of location, assumed two forms. The oldest and most widespread form applying to workshops dispensing rough artisan products was their distribution over a certain area paralleling the distribution of population. The other form of market orientation applied to the luxury trades which early sprang up alongside the ordinary crafts in upper class and aristocratic centers. All large cities, especially capitals, from antiquity to the beginning of modern times were centers of luxury industries, which were often promoted by the authorities. Only with the rise of the middle classes did the democratization of luxury consumption lead to shifts in location.

Later changes in location start from a condition of industrial localization caused by such twofold market orientation. Even where such orientation persists its influence is modified and there is a corresponding change in results. As improvements in transportation enable the individual producer to supply a larger share of consumption than is centered around the local market, the number of establishments in any single industry and with it the number of locations decrease. This process of concentration is accompanied by a differentiation between older countries and those which are still being settled. They differ not merely in the rate of development but in the phenomena attendant upon it; in the younger countries population grows largely by immigration, which creates new mass markets in the interior of the country, whereas in the older countries the natural increase in population is uniformly distributed and does not give rise to new centers of consumption. Only in foreign countries could a nation like Germany obtain new mass markets comparable to those which appeared in the western states of the United States. The influence on industrial location exercised by the domestic market is, however, quite different from that of a foreign market. The domestic market requires a central location from which all its sections can easily be reached; the foreign market, on the other hand, attracts industries to the periphery of the country, especially when ocean transportation is available. Such a distinction is of slight importance for England, where the distance to the seacoast from any inland point is so short that even domestic commerce can often take advantage of cheap coastal shipping. Nor does the conflicting influence of the domestic and foreign markets assume practical importance until a country has developed a large export trade. In the United States, for example, the antagonism remained latent, but where it became manifest it was acute because of the enormous distances involved. This situation led the Standard Oil combination to adapt its organization to a dual market attraction by establishing two great distribution centers, one on the Atlantic coast near New York, the other in the center of the continent near Chicago. In Germany, with its much smaller area, similar developments appear only in isolated instances, as in the iron and steel industry. It is much more typical that before the World War German foreign markets tended increasingly to attract large scale industries to the seacoast and the shores of the Rhine.

Orientation toward the domestic market predominates wherever settlement is still in process. For a long time this fact accounted for the most characteristic peculiarity of industrial development in the United States. With the exception of a few branches which could serve an unusually large marketing area, industry followed population westward. This shift, however, did not constitute an industrial migration in the

proper sense of the term unless other location factors were involved. In the east plants were not dismantled; industry expanded merely in the measure dictated by the increase of population. The general westward movement has recently subsided, if it has not ceased altogether. In so far as the movement of industry is an aspect of the migration of population it was brought to a standstill by the post-war restriction of immigration. Another factor was the opening of the Panama Canal in 1914, which established closer economic ties between the east and the west coast than those which exist between the Pacific coast and the middle west. The operation of the Panama Canal and the realignment of rates since the war have resulted, for example, in moving Chicago away from the Pacific coast on the average about $3.36 per ton of staple goods, while moving New York $2.24 nearer. Every place east of a line passing approximately through Cleveland has been afforded preferential treatment in reaching the Pacific coast through the new ocean route. The further growth of the middle west is now impeded by both of these factors; in fact movement out of this region is becoming noticeable here and there.

The labor factor may affect choice of location in many ways. Since labor is divided into a great many groups, the interchangeability of which for the purposes of a particular industry is rather limited, location with reference to the labor market is possible only if all the requisite labor groups are present; hence the larger the labor market the easier is the orientation toward labor, and this despite the fact that in large cities wage rates are as a rule higher than in small towns. Wage rates alone are never the deciding consideration. To wages must be added expenditures for labor welfare, more readily ascertainable in those countries where they are made compulsory by law. Such costs are usually reflected in a higher quality of labor performance, which, however, is not easy to evaluate; where the balance between the two lies is just as difficult to ascertain as it is to carry out a comparison between labor cost and labor service. This problem loses practical significance as the cost factor, capital, becomes increasingly important and the employer is forced to value continuity of labor more highly than its cheapness. When the threat of a strike involves a risk so much heavier than the difference of a few points in wage scales, it pays to purchase labor tractability with higher wages. Of late the search for tractable labor has induced perhaps as many shifts in location as the quest for low paid labor.

Yet there are instances of industrial location which may be described as wage minimum and productivity maximum types. Manufacturers of coarse cotton fabrics have in recent years tried more persistently than ever to locate their plants in wage minimum areas and have caused perhaps the greatest international industrial migration of modern times. Cotton manufacturing has shifted from areas of high productivity and high wages, such as Lancashire and eastern Massachusetts, to industrially backward regions like Japan, India and China, and in lesser degree to the southern states of the United States. In these areas success depends wholly upon the outcome of the race between rising labor cost and growing labor productivity; education and trade union organization have a vital effect upon the outcome, and the results are often subject to wide fluctuation. On the other hand, long established industrial centers, such as Birmingham, Essen and Pittsburgh, attract industry as productivity maximum areas. By virtue of their age and tradition they have developed labor of high qualification, which has increased the drawing power of labor as a location factor. As they developed into quality industries many lines of manufacturing, which at first located more or less by chance, shifted to such centers of high labor qualification, thereby acquiring a rational location.

Location with primary reference to the labor factor derives as a rule from two fundamental conditions. The first is that the proportion of labor costs in the total cost of the product must be high enough to give the labor factor a weight greater than that of working capital and of market; orientation toward labor requires at least that the saving in labor costs exceed the possible saving in transportation costs. This relation brings out certain differences between industries which are traceable to the weight of the raw materials used and which are therefore apt to persist; thus is explained the contrast between cotton manufacturing, in which the labor orientation has always predominated, and the iron industry, subject to much greater pressure of the transportation costs for raw materials. For industry as a whole the widespread decline in the relative importance of labor costs tends to decrease the influence of the labor factor upon location. Formerly it could properly be argued that since the proportion of labor costs rises

as the product approaches the finished stage, the labor orientation ought to manifest itself most clearly in those national economies which are dominated by the manufacture of consumers' goods. At present, however, this is no longer true, because it is just in these industries that capital costs have been gaining in importance at the expense of labor costs. Nowadays local differences in the cost of labor must be very large indeed to induce even a gradual shift in the location of an industry. In fact with the ever increasing "capitalization" of industry as a whole the basis for labor orientation becomes more and more narrowly restricted to preserving continuity of operations and hence to securing tractable labor.

The second condition for a labor orientation is that labor itself be bound to a given locality. This is not always the case. Even in the earlier stages of development labor is not always rooted to the soil. Slaves have always possessed a high degree of mobility. At present Hindu and Chinese coolies are exported to any part of the Pacific and Indian Ocean regions when a new demand for labor arises; and African labor is transported over long distances for work in South Africa and Katanga. In European countries law and tradition have tended to bind labor to its native soil. Among the European workers two major classes have influenced the location of industries. First there is the class of craftsmen, deriving from mediaeval handicraft and the old domestic system, who for many generations have specialized in certain types of work and in many cases have monopolized certain skills. The second is the working population of modern large cities; this group, deriving largely from the more intelligent and enterprising portion of the rural population, has developed a character of its own, having acquired an understanding of technical matters and a faculty for adaptation to changing tasks. For a long period such labor attracted industry. There were, however, notable exceptions; thus the chemical and iron plants built up at Leverkusen and Rheinhausen in Germany have drawn their labor from the outside. Of late there have been indications of a general trend toward greater mobility, especially among the skilled workers.

In colonized countries labor always enjoys considerable mobility. Immigration extends into internal migration, and local sentiment develops but slowly. Under such circumstances it is unnecessary for industry to choose location on the basis of labor availability; labor may be counted upon to be attracted to the industry. For this reason factories can be located in sparsely settled regions of the United States much more easily than in undeveloped sections of Europe, and it is natural enough that labor orientation should have been much less important there than in Europe. Exception must be made, however, for the New England states, the area of oldest settlement, where long established industries are now located largely on the principle of labor orientation. Another exception of more recent origin is the location of the cotton industry and still later of the rayon industry in the south; here the motivation is the availability of "poor white" labor. But such exceptions are mainly survivals from the past. Mobility, both physical and mental, is on the increase. The process of deracination begun by the railroad is now rapidly being completed by the automobile; attachment to the native hearth dating from the days of the town economy is being displaced by the much weaker feeling of love for one's country; and economic advantage tends increasingly to outweigh all other considerations. The growing mobility of labor, just as the decline in relative labor cost, indicates the diminishing importance of labor as a factor in industrial location.

Mining excepted, the location of industry with primary reference to the raw material factor occurs only if two conditions are fulfilled. One of them, discussed above in connection with labor, is that the saving in the cost of raw material due to such location must exceed the saving in the cost of labor were a labor orientation followed. This usually occurs when raw materials constitute a larger share of final cost than labor, and—since raw materials cost is composed of the price paid in the market, which is likely to be the same whichever market is patronized, and the price of transportation from the market, which depends on the location of the plant—orientation toward raw materials must be the more important the greater the cost of transportation, that is, the heavier and bulkier the raw materials are. For this reason the location of heavy industry is more likely to be conditioned by the factor of raw materials while that of the garment and textile industries tends to be influenced by the labor factor.

The second condition for orientation toward raw materials is that the savings in transportation costs for the raw materials must exceed savings for the finished product in case of a market orientation; this in turn depends upon

how much of the weight of the raw materials enters into the finished product. Thus the less the difference in weight between the two, the more location for market tends to supplant location for raw materials, even though railroad freight rates are usually higher for finished goods. In the cotton industry, where the difference in weight is slight, proximity to the finished goods markets is of primary importance, unless, as is usually the case, a labor orientation predominates. On the other hand, industries using heavy raw materials tend to be dominated by the raw materials orientation; besides the iron and steel industry, this is characteristic also of many branches of the chemical industry and of the glass, sugar and packing industries. Tobacco, rubber, oil and linoleum industries which use imported raw materials may be said to conform to this rule when they locate near the principal importing centers.

Rational location oriented toward raw materials is often difficult when an industry requires several important raw materials from widely separated regions. In such cases the most advantageous location is readily ascertainable only if the possible saving for one raw material is greater than that for all the others, and raw materials orientation prevails only under special conditions, such as those obtaining in the iron and steel industry, where both the important raw materials, ore and coke, lose much of their weight in the course of production. One of the great initial advantages of the English iron industry was that iron ore and coal were mined in close proximity to each other, so that the transportation charge was exceptionally low, less than one third of the expense of transportation for the German industry; today, however, English iron ore is practically exhausted, and this competitive advantage has disappeared. In the countries which are England's major competitors the ore mines and the coal mines are hundreds of miles apart. There the solution of the problem as to which raw material determines location depends largely upon one factor alone—the iron content of the ore; thus if the content is reduced 50 percent proximity to the ore mines becomes doubly important. Also in the United States at the present time the production of iron involves the use of about twice the weight of iron ore as of coke, and for this reason it has now become possible to effect a greater saving in raw material by shifting the iron and steel industry from the coal regions to the ore fields; the American iron and steel industry has migrated from Pittsburgh, first to Lackawanna on Lake Erie, then to Gary on Lake Michigan and finally to Carnegie in the ore area at the head of Lake Superior. The movement of the German iron and steel industry from the coal fields of the Ruhr toward the iron ore deposits in Lorraine and Luxemburg was disastrous to Germany, since the newest and best iron works were thus located in the regions which it forfeited as an outcome of the World War.

In general, since the useful content of mined raw materials is decreasing as exploitation proceeds, there is a tendency for industries dependent upon such supplies to seek location nearer the mines. This tendency is, however, counteracted by increasing emphasis on the utilization of by-products, which reduces the difference in weight between the raw materials and the products. The general trend toward location for finished products is thus competing with the somewhat limited trend toward location for raw materials, but this competition is for obvious reasons less effective than in the case of orientation toward labor. This intensification of the finished products orientation, involving on the whole an equalization of existing local differences, must be regarded as one of the most characteristic and widespread recent developments.

It will be appreciated that the theory of location, involving as it does a new problem and a new approach, was not readily assimilated into economics. Its advocates tended at first to interpret it too broadly, and to claim for it independent status. Thus an attempt was made to subsume all problems of "agglomeration" under location theory. While any locational factor may have an agglomerative effect, since its influence is not limited to single enterprises, it is equally true that many factors tending toward industrial concentration have nothing to do with the problem of location, as is evident from a consideration of the causes of large scale production and of the related problems of vertical combination. In the interests of the theory of location such distinctions should be clearly made. At the same time, it must be recognized that agglomeration can in itself become a locational factor, in so far as it creates advantages of personal contact between the technical and business personnel of different enterprises and industries.

More difficult is the question as to how the new theory of location, which up to a certain point applies equally to agriculture, industry

and trade, fits into general economic theory. Thünen had no doubts upon the subject; he started with the theory of prices and attempted to determine the importance of spatial distances to any price theory. It was not clearly perceived that industrial location could be considered from the same standpoint; nor is it generally realized today that the theory of location is essentially a problem of local differences in price formation. In the last analysis, however, the theory of location is an organic part of the general price theory, and as such has some application to all the different branches of economics, especially to those in which spatial separation and local differences are of importance. Thus it has a bearing on the theory of the distribution of the means of production and intrenches in ways not always clearly recognized on all problems of industrial expansion and contraction. It has made it possible to differentiate new forms of rent, and it is basic to the theory of transportation; it adds fulness to the general theory of division of labor, imparting a scientific character to discussions of international division of labor, so that it has even been termed the core of the theory of world economy.

Finally, the theory of location is related to the doctrine of stages of economic evolution, as Maunier pointed out in 1908 and as Ritschl has shown more recently. In so far as that doctrine is a theory of marketing it is of fundamental importance for the problem of location. Where there is no market, as in Bücher's self-sufficient natural economy, neither the price problem nor the problem of location exists. The latter arose only in the town economy with the origin of the market, but was unimportant because the town market was narrow. The transition to a national market was accompanied by a struggle between cities and new nation states which revolved in large part about questions of industrial location. A previously unknown process of relocation, which began with the shift of handicrafts to rural localities and the concentration of some industries in certain areas, gained in scope and intensity with the advent of steam. It was repeated on a larger scale with the development of world economy, when shifts in location became international in character. Through his theory of the unsuitability of the tropics for industrial production List was the first to endeavor to give content to the accepted notion that industries migrated to the locations which were most advantageous for each country as well as for humanity in general. But only with the formulation of the theory of location has a more profound and correct idea of the process of international division of labor come to prevail. Not industrial specialization but, in Weber's words, "the uniform distribution of production over the area" is now looked upon as normal and basic for the world economy as well as for the national economies. Agricultural production, which today is spread over the world in wide rings, to follow Thünen's figure, gives rise in the first place to an industry oriented toward agriculture. Such industry at first does little but the primary processing of raw materials, and only gradually undertakes also their manufacture. As a rule governmental needs, especially military requirements, have provided the initial impetus toward higher industrial development. With the rise of the world market the tendencies which dominated the growth of the national market are reproduced on an international scale. Industry is once more deflected to backward regions and local concentration effects a reduction in the number of industrial locations. A national economy, however, is better able to defend itself against the encroachment of wider markets than was the town economy. It freely employs the weapon of railroad rates, but utilizes as its chief instrument the tariff, which is directed at the equalization of foreign locational advantages. The growth of the world market is therefore a slower process than was the transition to a national market. As the earlier process it involves nullification or mitigation of the economic effects of local differences. For a time England was "the workshop of the world," but at present an "international decentralization" is in progress, assisted in large part by the increasing substitution for coal of fuels which are much easier to transport. The process, however, is still far from complete; the problems of the international location of industry are likely to dominate the economic development of all nations for a long time to come.

HERMANN SCHUMACHER

See: ORGANIZATION, ECONOMIC; INDUSTRIAL REVOLUTION; FACTORY SYSTEM; MARKET; MARKETING; TRANSPORTATION; POWER, INDUSTRIAL; TECHNOLOGY; URBANIZATION; METROPOLITAN AREAS; REGIONALISM; CLIMATE; GEOGRAPHY; RAW MATERIALS; NATURAL RESOURCES; LABOR; COST; OVERHEAD COSTS; LARGE SCALE PRODUCTION; SPECIALIZATION; STANDARDIZATION; RATIONALIZATION; NATIONAL ECONOMIC PLANNING.

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LOCH, CHARLES STEWART (1849–1923), English social worker. In 1875, six years after the founding of the Charity Organization Society of London, Loch became its secretary, and during some forty years of tenure he was the chief exponent and interpreter of the charity organization movement. He was indefatigable as lecturer, writer and organizer. Although his activities were restricted to England, his writings brought him international recognition. His influence was particularly strong in the United States, where the pattern of urban life proved highly favorable for the expansion of the movement. Spiritual heir of Thomas Chalmers, Edward Denison and Octavia Hill, Loch championed the theory of social case work and the need for coordinating all community agencies, public and private, in the treatment of the poor. Like others of his school of thought he attributed much of the "pauperization" of the poor to the evils of the English poor law system and became an ardent opponent of governmental relief schemes. He was therefore chary of social insurance as favoring mass rather than individual treatment and as leading to the deterioration of the moral fiber of the poor. His influence may be seen in the militant opposition of the Charity Organization Society of London to the unemployment insurance system as it developed in the years following the World War; it can be seen also in the opposition of many social workers in the United States in the period before and immediately after the war to mothers' pensions and in the specious use of the concept of "doles" by opponents of public relief in the United States.

While his devotion to social case work was the central interest in his life, Loch was active in promoting larger measures of public welfare. He introduced hospital social service in England, was responsible for the appointment of the royal commission on the care of the feebleminded, was interested in housing reforms and labored assiduously as a member of the Poor Law Commission of 1905 to 1909. In 1915 he was knighted for his services.

PHILIP KLEIN

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LOCKE, JOHN (1632–1704), English philosopher. Locke's training and practise in medicine and his constant employment in public affairs together with a naturally matter of fact bent of mind encouraged him to remain in all his inquiries primarily a conscientious and close observer of the facts, a characteristic which preeminently fitted him to be the founder of the school of British empiricism. He had little learning but "raised common-sense to the point at which it becomes luminous." He marked an

epoch in modern philosophy by undertaking the first really critical inquiry into the competence and range of the intellectual powers of man (*Essay concerning Human Understanding*, London 1690; reprinted Cambridge, Mass. 1931). His method was psychological in the sense that he relied entirely on looking into his own mind to determine both the nature and structure of its experience. But he did not use his own method rigorously or press his resulting doctrines to their logical conclusion. He sought to vindicate the achievements of modern science by teaching that all knowledge comes from experience, i.e. that it is derived from the senses, rejecting equally the scholastic doctrine that the first principles of knowledge rest upon authority and the Cartesian view that they are innate. But while all knowledge is derived from the same source, he maintained that our knowledge of physical nature falls short, in respect of certainty, of our apprehension of mathematics and of morals. This is due to a limitation of the human intellect which can never be transcended; but our powers are as great as is necessary for us to secure our happiness, beyond which we have no concern. This theory that knowledge is wholly derived from sense perception has commonly been held to issue inevitably in the skepticism of Hume; but because of his statement of the problem Locke has received credit also as the great forerunner of Kant and the "critical philosophy."

In his political writings also (*Two Treatises concerning Government*, London 1690; reprinted 1924) Locke's inquiry following his empirical method was governed by an urgent awareness of the facts and showed outstanding judgment and common sense rather than logical system. His second *Treatise of Civil Government* was admittedly a philosophical defense of the principles of the Revolution of 1688; and not only his doctrine but many of his phrases found their place in the American Declaration of Independence. First and last he was a defender of individual liberty whether against pope or king, against religious persecution (*Epistola de tolerantia*, tr. by W. Popple, London 1689, 2nd rev. ed. 1690; followed by two additional *Letters concerning Toleration*, 1690 and 1692) or literary censorship. It was from this point of view that he maintained that sovereignty resides in the will of the people and that governments are simply trustees for those ends to secure which men had in the past actually contracted themselves into society. When the government fails as trustee its removal by the people is not rebellion or the dissolution of the state, as Hobbes had maintained, but the legitimate exercise of the power of the sovereign. In his advocacy of popular sovereignty he showed neither the rigorous logic nor the unpractical extravagance of Rousseau; but he discerned the essential principles of the political advance actually achieved in his time and drove them home in terms which have to a remarkable extent fixed once for all the language of English democratic theory. His celebrated doctrine that the right of property ultimately depends upon labor alone had some influence on Adam Smith and subsequent economists and is still an operative force in determining the course of judicial review of the regulation of business in the United States.

As is seen from his *Journal* Locke was always an acute observer of economic facts. His main theoretic writings in this field are about currency, and with Newton he was called into counsel before the reform of the English currency in 1695. He displayed effectively the fallacy in the device of depreciating the currency and taught unequivocally that silver and gold are simply commodities not differing intrinsically from other commodities. He showed that the rate of interest cannot be fixed by law, although with characteristic inconsistency he favored the fixing of an upper limit above the current rate. He saw that it was not possible to stabilize the relative value of gold and silver and was himself a silver monometallist. He did not see, however, the fallacy in the view that the prosperity of a country is dependent on a favorable balance of trade, being so far a mercantilist as to hold that national wealth depends upon the holding of gold and silver. Still it would be difficult to find any previous or contemporary writer who was as important in the development of economic science as Locke. In fiscal science he is noteworthy chiefly for having originated the doctrine that all taxes finally rest on the land.

Locke was a severe critic of current methods of education in almost every particular (*Some Thoughts concerning Education*, London 1693; reprinted Cambridge, Eng. 1922). He regarded virtuous habits, practical wisdom and "good breeding," in that order, as the chief aims of sound education; last in importance came the inculcation of knowledge. In place of the customary concentration on Latin and Greek he advocated, perhaps overoptimistically, a somewhat exacting program covering the whole field of human knowledge as well as considerable training in athletics and practise in a manual trade.

All learning by rote he rejected; right reasoning he held to be best acquired by studying good models and by the pursuit of mathematics. He condemned the exploitation of the motive of fear in inducing the young to study and felt that appeal should be made rather to the pupil's natural desire of employment and learning and his propensity to imitation. Thus it is not surprising that Locke was an uncompromising critic of the schools and advocated private tuition.

C. R. MORRIS

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LOCKOUT. *See* STRIKES AND LOCKOUTS.

LOCKWOOD, BELVA ANN BENNETT (1830–1917), American lawyer and reformer. Widowed at the age of twenty-three and with a child to support, she entered college in a period when higher education was rare among women, taught school for several years and then took up the study of law. In 1873 she was admitted to the bar in Washington, D. C. Refused the right to practise before the Supreme Court of the United States, she drafted and secured the passage in 1879 of a law opening that court to women and was herself the first woman lawyer to be admitted under its terms. She was also responsible for the law giving women employees of the government equal pay with men for the same work. In 1884 and again in 1888 she was the candidate of the Equal Rights Party for president of the United States. Among the other movements in which she was actively interested were peace, temperance and woman suffrage. She was a delegate of the Universal Peace Union to the various international peace congresses held in Paris, London and Rome, and in 1896 she was commissioned by the secretary of state to represent the United States at the Geneva Congress of Charities and Corrections. She was for several years interested in the territorial encroachment claims of the Cherokee Indians and as attorney for them was largely responsible for obtaining a judgment of $5,000,000 against the government.

In addition to her reputation as a pioneer woman lawyer and suffragist Mrs. Lockwood was widely renowned as a lecturer. She was the author of numerous brochures on arbitration, disarmament and women's rights.

LAURA M. BERRIEN

Consult: Willard, F. E., and Livermore, M. A., *American Women*, 2 vols. (New York 1897) vol. ii, p. 468–70.

LODGING HOUSES are generally defined as institutions for the provision at low rates of temporary shelter for casual or transient workers. In England and in some parts of the United States, however, the term lodging house is also applied to rooming houses catering to low paid but regularly employed workers, who having migrated from the country to the large commercial and industrial centers have become detached from the family group.

The origin of the lodging house in the narrower sense of the term dates from the beginning of large scale labor transiency. Prior to the industrial revolution there were movements of "homeless" wandering workers to centers of trade and navigation; and in periods of war and famine transiency naturally increased. With the industrial revolution, however, attended as it was by growth of urbanization and concentration of industrial activity, the existing boarding and rooming houses which had provided shelter for the detached non-transient worker were unable to meet the increasing demands of migratory and seasonal workers for a cheap night's lodging. The onrush of industrialization created a serious housing shortage for all workers, which was inadequately solved in the case of families by the

construction of tenement dwellings; the appearance of floating unskilled or unemployed laboring groups was part of the same process and contributed a special problem of housing.

Like the lodging house, the boarding house, rooming house, "flop" house and "bunk" house serve for the worker without a family as a substitute for the home. The boarding house, perhaps the generic antecedent of all types, is most generally found in districts where the demand does not justify the lodging house. Boarding houses are of two kinds: the first is the large company type and the second the small, intimate home type. Houses of the former type are more usual in localities where rapid development of business activity attracts numbers of transient laborers. They may cater to sailors, to factory workers or to certain national or racial groups. As urbanization of such districts sets in, this kind of boarding house yields its food service to the restaurant and its shelter service to the lodging house. In England a peculiar feature of the company boarding house was the custom known as living in which prevailed until the early part of the present century; owners of commercial or industrial enterprises provided for their employees living quarters in which residence was usually compulsory. This was one of the few forms of company house in which women resided. The abuses to which it gave rise with respect to conditions of employment, freedom of movement and provision of decent accommodation led to its extinction. The second type, or home boarding house, serves both male and female workers who are of a higher social and economic class and whose occupations are usually more regular and more skilled than those of the first group. With its common dining room, its common parlor and its landlady this institution is better adapted to the quiet residential community. Urbanization also tends to eliminate this species of boarding house.

The rooming house, which frequently permits light housekeeping, usually caters to the same social and economic class as does the home boarding house. While the latter supplies in many respects a home environment, the rooming house because of its lack of social life is often conducive to vice.

A flop house is a lodging house of the dormitory type but with much lower prices than other lodging places. The better grade of flop house provides bed and bedding; there is a lower grade which provides only the bare bunks or chairs, and the lowest permits men for a pittance to sleep on the floor. In some European and Asiatic cities it is possible to engage sleeping space with or without bedding.

The bunk house is a combination lodging and boarding establishment, sometimes supplemented by a commissary department, which serves transient homeless workers in places remote from the urban center. It is found on railroad or construction jobs, in lumbering or mining camps or on large plantations. Here the men may live in tents, barracks, box cars or, as in the diamond fields of South Africa, in large closed compounds. The food and lodging service may be managed by the employing company or may be contracted for by commissary and boarding companies. The commercial boarding house tends to replace the bunk house wherever the population increases sufficiently to make it profitable.

A type of public shelter extensively used in Europe is the farm colony, which was created with the double purpose of ridding the cities of unemployable and vagrant persons and of providing labor for land cultivation. It may be a place for either enforced detention or voluntary commitment; in seasons of unemployment it serves as a lodging house for the homeless unemployed. An auxiliary to the municipal lodging house, it has sometimes lapsed from its original function of rehabilitation into a means of caring for the pauper class which overburdens the city asylums. The most successful European farm colonies are found in Germany, although they have been established in other countries, notably France, Belgium, Switzerland and the Soviet Union. In the United States private agencies have made unsuccessful attempts to maintain such colonies.

In the evolution of lodging houses proper two general classes have developed. The earliest of these, still most numerous, is the commercial lodging house. The second class includes lodging houses operated by public and private charity, either free or at cost, but all organized for social purposes. The latter are usually maintained in an attempt to overcome the deficiencies of commercial lodging houses. Laws and regulations imposed on the commercial houses apply, however, with equal force to the charitable lodges. By legal definitions or court decisions lodging houses have been distinguished from hotels, sometimes on the basis of the fees charged but usually on grounds of internal structure. A lodging house may be a dormitory, but more often the beds are separated by dwarfed partitions which do not reach the ceiling, thus forming

tiny rooms known in the United States and in England as cubicles and in France as *chambrettes*. Other characteristics of the lodging house are the segregation of the sexes and the preponderance of men; in Europe there are occasional lodging houses which shelter migrant families. While as a general rule meals are not served, lodging houses in some countries do provide communal kitchens where occupants are permitted to do their own cooking. A further feature which distinguishes the lodging house from the hotel and which has grown out of its function as a cheap and temporary form of accommodation is its right to refuse shelter to undesirable applicants.

The commercial lodging houses which sprang up in all industrial countries in the first half of the nineteenth century gave rise to the abuses which usually occur when the care of socially dependent groups is left to private initiative. Not only were the accommodations inadequate and even injurious to the health of the patrons, but vice and crime were often encouraged and saloons and gambling halls established. Moreover these houses were often exploited by corrupt politicians who used them to establish fictitious residences for "floaters." Concurrently with the commercial undertakings charitable and semicharitable lodging houses were initiated by various religious and evangelistic organizations. Some of these early agencies still exist; the Seamen's Church Institute of New York founded in 1843 has recently added an extensive social program to its original activities, and various small shelters are maintained by evangelistic missions in every large city. Later private charitable shelters were established by social welfare agencies which aimed to provide an opportunity for men to escape the demoralizing influences of the commercial lodging houses or to threaten these houses with competition in order to force them to raise their standards of accommodation. Some of the later houses, like that established in New York City in 1885 by the Sanitary Aid Society or the New York Wayfarers' Lodge, which opened in 1893, were model demonstrations designed to interest the municipality in establishing a public lodging house. The outstanding examples of the modern socio-religious lodge are those of the Salvation Army, which since about 1890 has established shelters at cost fees in most large cities of the world. The most prominent and the earliest lodging houses for men established on a non-religious basis are the Rowton houses in England founded in 1892. Similar institutions are the three Mills hotels in New York City and the Rufus F. Dawes Hotel in Chicago. These constitute a hotel type of lodge operated on a non-profit basis. A sufficient charge is made to insure maintenance and in some cases to provide a small surplus for further development.

At present there are municipal lodging houses in most cities of the world. One of the earliest and most extensive was established at Berlin in 1887. The refuge at Paris was founded in 1889, that at London in 1893 and the Municipal Lodging House of New York City in 1896. In every case these large public lodging houses were preceded by considerable effort of an experimental nature on the part of privately endowed agencies. In the United States the major objective of these agencies was to persuade the municipalities to establish public shelters and to discontinue the practise of lodging homeless persons in police stations and county jails.

Lodging house patrons are drawn chiefly from the older age groups of the community; the median age varies from forty to fifty years. As a class the group rarely rises above the minimum subsistence level. It is usually the first to be affected by unemployment and the last to be relieved by a lively labor market. Because of the element of selection the number of people sheltered in lodging houses cannot be considered an accurate index of unemployment, but it does indicate the effect of depression on the lowest paid working group.

The patronage of the lodging house is, however, by no means restricted to the casual or migrant labor groups, and it is in connection with its mixed character that problems of social control arise. It includes every manner of derelict not found in public or private institutions—criminal, pauper, beggar, prostitute and mental defective—and the opportunities for the breeding of crime and the formation of vagrant habits are plentiful. The regulation of lodging houses by public authorities, which began in England in 1851 and was followed in other countries toward the end of the century, aimed mainly at control of the behavior of lodgers; in fact lodging houses were often put under the surveillance of the police. But the later activity of social and religious agencies in providing decent temporary shelter gave rise to a new form of control—the regulation of sanitary conditions in lodging houses. It has therefore become the practise to entrust departments of health or welfare with the supervision of lodging houses; thus the lodging house population in the best regulated cities has come to be a quasi-institutionalized class.

Sanitary regulations consist chiefly of minimum requirements for light, air space, ventilation and safety from fire. Although such laws exist in practically every state and city, requirements are not easly enforced; even honest officials find it difficult to enforce regulations concerning the conduct rather than the construction of the house.

NELS ANDERSON

See: CASUAL LABOR; MIGRATORY LABOR; SEAMEN; LONGSHOREMEN; UNEMPLOYMENT; VAGRANCY; HOUSING; HOTELS.

Consult: London, County Council, Report by the Medical Officer of Health, *Common Lodging Houses and Kindred Institutions* (London 1927); Chesterton, Ada E., *In Darkest London* (London 1926); "Die Wandererfursorge im Rahmen der sozialpolitischen Massnahmen des letzten Jahrzehnts" in *Innere Mission*, for 1929; "Fürsorge für Obdachlose" in *Berliner Wohlfahrtsblatt*, vol. v (1929) 65–80; Farrant, Richard, "Lord Rowton and Rowton Houses" in *Cornhill Magazine*, n.s., vol. xvi (1904) 835–44; Bradwin, E. W., *The Bunkhouse Men* (New York 1928); Kettleborough, Charles, "Inspection of Hotels and Public Lodging Houses" in *American Political Science Review*, vol. vii (1913) 93–96; Wolfe, A. B., *The Lodging House Problem in Boston* (Boston 1906); Fretz, F. K., *The Furnished Room Problem in Philadelphia* (Philadelphia 1912); Solenberger, A. W., *One Thousand Homeless Men* (New York 1911); Anderson, Nels, *The Hobo* (Chicago 1923); Zorbaugh, H. W., *The Gold Coast and the Slum* (Chicago 1929); Office Central des Oeuvres de Bienfaisance, Paris, *Charitable, Bienfaisant et Social* (Paris 1926); Joffroy, A., and Dupouy, R., *Fugues et vagabondage* (Paris 1909); Calcutta Improvement Trust, *Report on the Condition, Improvement and Town Planning of the City of Calcutta* by E. P. Richards, 2 vols. (Calcutta 1914); Buell, R. L., *The Native Problem in Africa*, 2 vols. (New York 1928) vol. i, ch. iii; Gamble, S. D., *Peking: a Social Survey* (New York 1921); Mavor, James, *An Economic History of Russia*, 2 vols. (2nd ed. London 1925) vol. ii, 397–406.

LOEWENSTEIN, ALFRED (1877–1928), Belgian financier. The son of a Brussels stockbroker, Loewenstein engaged in financial affairs from an early age. About 1905 he became connected with the Pearson-Farquar group, which was engaged in the development of electrical industries, especially in South America. He led in introducing into Belgium such securities as Rio de Janeiro Tramway Light and Power, Brazilian Traction Light and Power and Barcelona Traction Light and Power, legally Canadian corporations. All of them became objects of large scale speculation on European exchanges. These operations laid the basis of his very large personal fortune. After the World War Loewenstein extended the field of his activity, apparently envisaging a great international electrical trust; in 1923 he organized the Société Internationale d'Énergie Hydro-Électrique, a holding company principally for "Canadian" securities. The Sofina benefited from his subsequent dismissal. In 1926 he created the Hydro-Electric Securities Corporation, a holding body for North and South American electrical stock incorporated in Montreal. He was interested also in the artificial silk industry and tried to secure control of British Celanese, Ltd.; he created the International Holding and Investment Company with important interests in several large European companies. He organized other minor holding companies and in 1928 he tried unsuccessfully to secure control of the Banque de Bruxelles.

Although Loewenstein's contribution to the European popularity of its securities aided in developing South America, his celebrity was not based on the social value of his work but on the immensity of his fortune, his extraordinary ostentation and his flair for publicity. Exclusively a financier, he regarded the industrial and productive aspects of business as objects of financial combinations and stock manipulation. His activity helped to aggravate economic instability and irregularity, while his extravagance aided in discrediting capitalists and the capitalist regime. He died by falling from an airplane into the North Sea.

B. S. CHLEPNER

Consult: Hickok, Guy, "Alfred Loewenstein—the Man Who Could Not Stop" in *Bankers Magazine*, vol. cxvii (1928) 357–61.

LOGIC. The conditions under which logical theory originated are indicated by the two words still generally used to designate its subject matter—logic and dialectic. Both of these words have to do with speech, not of course with speech in the form of mere words but with language as the storehouse of the ideas and beliefs which form the culture of a people. Greek life was peculiarly characterized by the importance attached to discussion. Debate and discussion were marked by freedom from restrictions imposed by priestly power and were emphasized with the growth of democratic political institutions. In the Homeric poems the man skilled in words which were fit for counsel stands side by side with the man skilled in martial deeds. In Athens not merely political but legal issues were settled in the public forum. Political advancement and civic honor depended more upon the power of persuasion than upon military achievement. As general intellectual curiosity developed

among the learned men, power to interpret and explain was connected with the ability to set forth a consecutive story. To give an account of something, a logos, was also to account for it. The logos, the ordered account, was the reason and the measure of the things set forth. Here was the background out of which developed a formulated theory of logic as the structure of knowledge and truth.

Of itself, however, it was only a background. Definite formulation of theory was the product of fermentation introduced by the philosophers. In the sixth and fifth centuries B.C. the Greek world of the Mediterranean basin was the scene of travel, commerce and social intercourse. The result was the development among the intellectual class of a kind of cosmopolitanism. Scholars, called wise men (sophists), subjected the various arts—military, civic and industrial—to analysis and report. In consequence these arts, which formerly had a local meaning and scope, resting upon the tradition and customs of a particular community, were given a theoretical treatment. They were lifted out of their special environments and subjected to rationalization. The period was characterized by the preparation of an enormous number of dissertations covering all the arts. Traveling scholars as they went about offered to teach the arts by methods which rendered slow practical apprenticeship unnecessary. Finally, some of the more ambitious of these men offered their services to the young men of Athens, claiming that they could teach the "virtues"—an English word which gives only an awkward rendering of the Greek term, since the latter denotes skilled excellence in the arts, especially the political arts, combined with that power to command the attention of others which would assure civic preeminence. For those going into political life this promise involved training in ability to speak in private groups and in the public forum and formed the beginnings of a kind of practical logic.

Under the merciless attacks of Plato the name sophist took on an invidious meaning. He claimed that the method of the sophists was one of sham; that it was the art of appearing wise, not of being so. It aimed not at truth but at persuasion by whatever specious arguments would silence an opponent. Plato insisted therefore that the method of the sophists was one of contention, aiming at victory over others and hence assuming ultimate division in the structure of the mind. A true method, on the other hand, is a cooperative search, assuming an objective unity beneath all divisions of opinion and belief and terminating in the production of a common understanding sustained by grasp of the one relevant objective truth. Hence Plato called his method dialectic, a term obviously derived from the dialogue of those engaged in the exchange of ideas.

Part of the logical work of Plato consisted in pointing out some of the tricks by which the sophists made "the worse appear the better reason." This material was formulated by his successor Aristotle and remains today in logical treatises under the caption of fallacies. His positive contribution was his theory of the universal, the principle underlying the differences of different instances. Aristotle thus gives the Platonic Socrates credit for the discovery of induction and definition. Induction (better termed eduction) was the process by which the universal was extracted from a number of varying cases, definition the process by which this principle was fixed for use in all subsequent thinking. In Plato's system this universal constituted the "essence" or true and ultimate reality of the things in question. Aristotle criticized the resulting isolation of the universal from particular things. This isolation agreed both with Plato's mathematical interests and with his desire to obtain a method for social reform, since the separate universal provided an ideal reality which could be placed in contrast with existing things.

Aristotle was above all a naturalist. He asserted that the universal is united with particular existences, binding them together into a permanent whole (the species) and keeping within definite and fixed limits the changes which occur in each particular existence. The species is the true whole of which the particular individuals are the parts, and the essence is the characteristic form. Species fall within a graded order of genera as particular individuals fall within the species. Thinking is the correlate of these relations in nature. It unites and differentiates in judgment as species are united and separated in reality. Valid knowledge or demonstration necessarily takes the form of the syllogism because the syllogism merely expresses the system in which, by means of an intervening essence, individuals are included in species. Definition is the grasp of the essence which marks one species off from another. Classification and division are counterparts of the intrinsic order of nature.

Thus the logical theory which furnished the intellectual method of Europe for almost two thousand years was formulated when the appliances of observation and experimentation

upon which modern scientific inquiry and testing depend were lacking. Moreover the only mathematics available was geometry, upon the model of which Alexandrian scientists constructed the astronomical frame. The traditional logic was a logic for clarifying and organizing that which was already known or that which was supposed to be known and hence currently believed. For putting this material in rational form, placing upon it the stamp of rational authenticity, logic was an unrivaled instrument. But it could not furnish means for breaking through the limits of the intellectual content of current culture so as to make discoveries in new fields. The ultimate premises, or validating principles (beginnings), of all knowledge were assumed to be already in the possession of the mind. Sense perception supplied the demonstrative material on the side of the particulars, and rational perception of self-evident truths, or axioms, performed the same office on the side of universals. Human learning, or discovery, was limited to putting these two given things together.

In its own intention the Aristotelian logic was a logic of truth. It set forth the structure of valid knowledge, which corresponded in turn to the systematic structure of reality. But when after the decline of interest in nature ancient culture became introspective and retrospective, logic declined more and more to a mere formal instrumentality of exposition and communication. The ethical schools, skeptic, Epicurean and stoic, either deprecated the study of logic as of no importance (or even harmful in distracting attention from the supreme business of the conduct of life) or else reduced it to a mere device for avoiding error in moral judgments. Higher learning, as in the universities of Athens and Alexandria, devoted itself to organizing and interpreting the literatures of the classic past and put logic on a level with rhetoric as a formal aid in this task.

The administrative genius of Rome had little use for inquiry and reflection for their own sakes. It was interested in the method of thought as far as it could be used as a tool of political life. At first this was in form largely subordinate to rhetoric in the guidance of oratory when, as in the time of Cicero, oratory played a crucial part in civic rivalries. During the empire logic was the instrument for organizing the complex legal body of rules and decisions under fixed general principles, derived if possible from the "law of nature." Logic thus became definitely a formal discipline useful in arranging material for purposes of argument, exposition and instruction.

The Christian church took over this conception of logic and employed it as an agency for similar purposes of attack and defense, especially the defense of doctrine against pagan without and heretic within. During the great scholastic period of the twelfth and thirteenth centuries there was, however, a striking revival in the scope and vitality of formal logic. The writings of Aristotle came to Christendom through the Arabs. Intellectual activity was stimulated to undertake a comprehensive organic survey and formulation of Christian doctrine, with a view to showing its intrinsic harmony with reason even when the material of revelation was above reason. The relatively scanty axioms and first principles of Aristotle were expanded to include the authoritative truths of the Scriptures, fathers, church councils and popes. An extraordinarily stringent method of demonstrative exposition was built up in which all possible objections were considered and refuted in syllogistic fashion until the authorized body of doctrine was intellectually organized into a system.

The universities, which were the centers of intellectual life, played their part. Great teachers met all comers in intellectual tournaments. Teaching was influenced by the method of doctrinal discussion while it also contributed to the perfecting of the latter method. The constructive intellectual movement which gave meaning and point to the development of formal logic degenerated after the work of unifying Christian dogma and rationalizing its structure had effected its purpose. There followed that period of hair splitting and refining which tended for a long time to throw the term scholastic into disrepute. What was even more important, the center of intellectual gravity was shifting. Secular and humane interests were taking the place of ecclesiastical and theological concerns. Satisfaction of the new interests directed man toward nature and new intellectual methods were demanded. The cry went up that the old logic was one of words only and that what was required was a logic which would enable men to cope with things. New physical instruments and materials were invented or were introduced from the Orient. Travel and exploration extended the scope of intellectual data. The demand arose for a logic of discovery and new inquiry. Literary persons joined with reformers of society and of science in ridiculing the pretensions of syllogistic logic. Mathematical concepts, in conjunction with the apparatus of the newly developing tech-

nology, replaced the ideas of essences, genera and species as central in the constitution of nature.

The full history of the revolt and of the many more or less inchoate and antagonistic attempts to formulate a new logic is practically identical with the intellectual history of the period from the seventeenth century to the present. There soon appeared a division which, while technical in outer appearance, may be said to have had an almost tragic effect upon the intellect of the western world. This was the split between those who appealed exclusively to experience in the form of sense perception as the source of valid beliefs and those who appealed to reason in the form of mathematical concepts as the ultimate authority. Ignoring refinements one may regard Francis Bacon and Descartes as the representatives of the two movements. On the whole, with some notable excursions from each side into the territory of the other, Great Britain adhered to the empirical school and the continent to the rationalistic.

The tendency of the latter school was to engage in conceptual constructions and dialectic manipulations. Aside from mathematics and the subordination of physical phenomena to mathematical formulae (a field in which it won some notable triumphs) the rationalistic school took almost complete possession of the fields of morals, jurisprudence, political theory and rational theology, theology supposedly emancipated from supernatural bonds. It was thus supreme in the entire realm of what would now be termed the social sciences. The devastating wars of the seventeenth century, civil and religious, fostered a demand for a rational and moral standard as an authority above and untouched by shifting temporal struggles. Norms were demanded which could be applied securely to empirical social and political phenomena. To this end they must proceed from the source of reason which was superior to mundane and human vicissitudes. Grotius, for example, revamped the law of nature of the mediaeval period to help rationalize international relations, and his successors in various fields of jurisprudence and morals made his method of appeal more and more stringently logical.

The tendency of the rationalistic method was optimistic and justificatory or apologetic. The underlying assumption was that empirical social phenomena, however much they might fall short of rational norms, were yet subject to their authority. Actual institutions might be criticized in their detail as coming short of the law of reason, but their essential nature was justified as a manifestation of universal rationality. Thus Spinoza, who was anything but a political conservative in his ultimate ideal, held that the function of the state as a representative of law and therefore of reason and universality is so intimate and necessary that no conceivable abuse of authority justifies rebellion.

The religious civil wars of the seventeenth century had an opposite effect in Great Britain. They strengthened the empirical school because they created an atmosphere of moderation and compromise. The necessity for toleration was so evident that desire to carry through any comprehensive set of beliefs to its logical end was effectively dulled. The Revolution of 1688 not only established John Locke as the official intellectual apologist of popular rights (including the right and duty of rebellion) but made the empirical method developed by Locke in his *Essay on the Human Understanding* supreme in the fields of morals, politics and natural theology until the early part of the nineteenth century.

David Hume detected what was logically the weak point in Locke's empiricism by showing that it left no place for intrinsic relations and thus resulted in an intellectual atomism whose only justifiable philosophic conclusion is complete skepticism. Nevertheless, Hume appealed to habit and custom as practical if irrational unifying and relating forces. Thus he really succeeded in strengthening rather than upsetting the empirical spirit in British thought. At most he gave it a conservative turn by insisting that habit is the sole ultimate principle of unity and coherence and so prevented the critical liberalism of the school of Locke from taking a radical turn. Hume's work bore its distinctly philosophic fruit in Germany. It destroyed rationalistic complacency in the mind of Kant and started him on the way to producing a philosophy which would give sense experience the function of supplying the matter of all justifiable beliefs and practical acts, while reason would furnish its rational forms, its justifying norms and inescapable imperatives. Kant's successors in Germany all felt that Kant's reconciliation of sense and reason in logical method as well as in the practical and moral applications of the new logic was mechanical, leaving the two factors in unstable equilibrium. The movement toward their organic union culminated in what may not unfairly be called the institutional idealism of Hegel.

The technical transformations wrought by

Hegel in logical theory, with his dialectic movement of thesis, antithesis and synthesis, lie beyond the scope of this article. In substance it may be said, however, that Hegel sought a logic which would avoid the abstract, non-historical character of the earlier semimathematical rationalism. He wished in effect to make the movement of history the supreme rational manifestation. If philosophical and terminological technicalities are ignored, his work may be characterized as an attempt at a logical apotheosis of the historical method; indeed it was largely through his influence that the historical method was in the first half of the nineteenth century brought to consciousness in the fields of law, politics, morals, language, religion and political economy. Hegel piously retained the rationalistic idea of the supremacy of reason and absolute mind in history.

As far as fundamental logic was concerned, however, there was no great upset when Marx "stood Hegel on his head," as he said, and treated the ultimate logic and dialectic of history as essentially economic in character. The growing importance of evolution in biological science, with its stress on biological realism or biological materialism, was largely responsible for this rise of economic realism or materialism as an interpretation of human history. With Marx' official successors the materialistic dialectic of history was developed in an absolutistic spirit which made the complete downfall of bourgeois and capitalistic society inevitable, leading so necessarily to the social snythesis of communism as seemingly to free human action and planning from any responsibility in producing social change. The net tendency of the logic of historicism in its identification with evolutionism was to elevate an automatic movement of history to the position of supreme arbiter.

In Great Britain during the nineteenth century there was a rehabilitation of empirical method. It is noteworthy that Mill's logic was originated by his desire to introduce scientific method into social and moral subjects. He was offended by the adherence to dogmatic authoritarian methods in this field as well as by the position, typified by Macaulay, that in morals and politics we must depend only upon precedent and individual insight, political phenomena as such being outside the scope of scientific method. According to Mill, we can rise from observations to hypotheses, develop these hypotheses deductively and then apply them to social as well as to physical material. Mill's particularistic assumptions led him, however, into an extreme individualism which prevented realization of his scientific aim. On the other hand, the increasingly dispersive and disintegrative tendencies of social life led a group of English thinkers to rely upon the "organic" logic of the German idealistic school as the best means of combating atomistic individualism. For a generation in the latter part of the nineteenth and the early part of the twentieth century this philosophy and logic were almost dominant in English thought. Their influence coincided with the ebbing of the liberalism of the type of Locke and Mill and the growing desire for state regulation of private enterprise. Whether Hegel so intended or not, there is no doubt that the premises of his logical method are conducive to collectivistic policies in social matters.

The split in schools of method earlier referred to as characteristic of modern life continues into the present. On the whole at the present time the conceptualistic methods of the rationalist school find little favor in the social sciences. The latter are devoted largely to empirical fact finding and to the attempt to arrive at social laws "inductively." Abstinence from general ideas is accompanied, however, by remoteness of social method from guidance of social, legal and economic phenomena. The split is called tragic because it is the sign of failure to find a generally accepted method which will do in control of social forces what scientific method has accomplished in control of physical energies. We now oscillate between a normative and rationalistic logic in morals and an empirical, purely descriptive method in concrete matters of fact. Hence our supposed ultimate ideals and aims have no intrinsic connection with the factual means by which they must be realized, while factual data are piled up with no definitely recognized sense of their bearing on the formation of social policy and the direction of social conduct.

Consciousness of this situation has been a main factor in a new attempt to generalize the experimental side of natural science into a logical method which is applicable to the interpretation and treatment of social phenomena. So far this recent movement remains almost entirely American in character. It was initiated by Charles S. Peirce and carried out especially in morals and religion, under the name of pragmatism, by William James. It is characteristic of this logical school to insist upon the necessity of conceptions which go beyond the scope of past experience for guidance of observation and experiment, while it also insists that ideas are only

tentative or working hypotheses until they are modified, rejected or confirmed by the consequences produced by acting on them. Emphasis upon experiment differentiates this method from historic empiricism as well as from present fact finding methods. The latter treat social inquiry as wholly outside the facts investigated and merely survey and record data in a certain field. The *novum organum* called for by the experimental logic insists that no such separation is possible in social matters, and that ideas and principles must be employed to deal overtly and actively with "facts" if, on one side, the facts are to be significant and if, on the other, ideas and theories are to receive test and verification. Experimental logic would resolve the controversies, now four centuries old, between reason and sense experience by making both concepts and facts elements in and instruments of intelligently controlled action.

JOHN DEWEY

See: METHOD, SCIENTIFIC; SCIENCE; PHILOSOPHY; SOPHISTS; SCHOLASTICISM; PRAGMATISM; MATERIALISM; POSITIVISM.

Consult: Prantl, Carl von, *Geschichte der Logik im Abendlande*, 4 vols. (Leipsic 1855–70; reprinted 1927); Harms, Friedrich, "Geschichte der Logik," ed. by Adolf Lasson in Harms' *Die Philosophie in ihrer Geschichte*, 2 vols. (Berlin 1879–81) vol. ii; Adamson, Robert, *A Short History of Logic*, ed. by W. R. Sorley (Edinburgh 1911); Enriques, Federigo, *Per la storia della logica* (Bologna 1922), tr. by Jerome Rosenthal as *The Historic Development of Logic* (New York 1929); Dewey, John, *Essays in Experimental Logic* (Chicago 1916), and *Philosophy and Civilization* (New York 1931); Schiller, F. C. S., *Logic for Use* (London 1929); Peirce, C. S., *Collected Papers*, ed. by Charles Hartshorne and Paul Weiss, vols. i–ii (Cambridge, Mass. 1931–32) vol. ii; Cohen, M. R., *Reason and Nature* (New York 1931); Marck, Siegfried, *Die Dialektik in der Philosophie der Gegenwart*, 2 vols. (Tubingen 1929–31); Engels, Friedrich, "Dialektik und Natur," ed. by D. Ryazanov in *Marx-Engels Archiv*, vol. ii (1927) 117–395; Bradley, F. H., *The Principles of Logic*, 2 vols. (2nd ed. London 1922); Social Science Research Council, Committee on Scientific Method in the Social Sciences, *The Methods in Social Science*, ed. by Stuart A. Rice (Chicago 1931).

LOISEL, ANTOINE (1536–1617), French jurist. Loisel was a pupil of Cujas when the latter was an advocate at the Parlement of Paris; on various occasions he exercised the functions of *avocat du roi* and procuror general. Of very extensive learning, he published numerous works of history, archaeology, philology and Latin poetry. As a jurist he collaborated with Cujas in the study of Roman law and discovered important unpublished texts, the *Consultatio veteris jurisconsulti* and the *Novellae majoriani*. But his principal work was the *Institutes coustumières*, which is the first synthesis of the customary law applied in the north of France. Until then the customs of each town and of each province had been the subject of independent monographs. Dumoulin, who first thought of unifying French law, taking as a basis the custom of Paris, failed in his attempt because it was too ambitious. Loisel, on the contrary, composed a very brief work made up of short legal rules formulated in archaic and picturesque language and assuming frequently the form of proverbs, which made them easily remembered. A great number of the rules retouched and rejuvenated have passed into the *Code Napoléon*. Loisel's intention was to compose for French customary law a work analogous to the Institutes of Justinian, a clear and convenient manual giving the essential principles and clarifying controversial points. Although the *Institutes coustumières* contain the same lacunae as the customs from which they are taken—they are very summary on the law of obligations but more complete on the law of persons, property, succession, marriage contracts and on feudal law—they may be considered the best résumé extant of French customary law. But their conciseness has obliged editors to add commentaries of unequal value. Loisel's *Pasquier, ou dialogue des avocats*, contains valuable information on the history of lawyers and the functioning of justice in ancient France.

GEORGES BOYER

Important works: *Institutes coustumières*, first published in Coquille, Guy, *L'institution au droict des françois* (Paris 1607); new ed. with notes by François de Launay (Paris 1688); ed. with notes by E. J. de Laurière, 2 vols. (Paris 1710 and 1758), reedited by A. M. J. J. Dupin and E. R. L. de Laboulaye, 2 vols. (Paris 1846); *Pasquier*, first published in *Divers opuscules* (Paris 1652), containing biography of Loisel by his grandson Claude Joly; new ed. by A. M. J. J. Dupin (Paris 1844).

Consult: Demasure, A., *Antoine Loisel* (Paris 1876); Viollet, Paul, *Droit privé et sources: histoire du droit civil français* (3rd ed. Paris 1905) p. 231–36, and bibliography p. 260.

LOMBARD, PETER. *See* PETER LOMBARD.

LOMBROSO, CESARE (1835–1909), Italian criminologist. Lombroso, who was professor of legal medicine at the University of Turin, came into prominence by the publication of his book *L'uomo delinquente*, in which he affirmed the atavistic origin of the born criminal. He based his contention on numerous anatomical, phys-

iological and psychic stigmata found in many criminals, stigmata which he declared were not natural to mankind at present but were peculiar to primitive and savage races. He believed that a conjunction of stigmata determined the type of inborn delinquency, which revealed itself externally; he portrayed this criminal type by means of composite, or Galtonian, photographs of criminals. He successively superimposed the complementary theses of epilepsy and moral insanity, which he regarded as secondary characteristics of atavism. In his detailed classification of criminals he acknowledged that not all were born criminals, formulating such categories as "criminals of passion," under which he included political criminals imbued with excessive patriotism; "insane criminals," including alcoholics, mattoids and hysterical criminals; and "occasional criminals," the victims of environmental factors. Although, as Haeckel pointed out, Lombroso's ideas on inherited criminality would lead directly, if social Darwinian doctrine were applied, to the use of the death penalty on a grand scale as a means of freeing the human species from its malefactors by artificial selection, Lombroso held the death penalty to be the last resource in the repression of crime. He favored instead methods of readaptation of the criminals and advocated the doctrine of the symbiosis of crime, by which society would utilize the serviceable qualities and aptitudes of the malefactors. In his studies of genius Lombroso concluded on the basis of selected data that genius was related to epilepsy. In 1880 he founded the *Archivio di psichiatria, antropologia criminale, e scienze penali* to further the views of his school. Although premature, exaggerated and now largely superseded, Lombroso's ideas stimulated the study of criminal anthropology and by their positivistic approach played a decisive role in the transformation of penology and criminal law, especially when supplemented by the work of Ferri and Garofalo.

C. BERNALDO DE QUIRÓS

Important works: *L'uomo delinquente* (Turin 1876; ed. by G. Lombroso-Ferrero, 3 vols., Turin 1897–1900; abr. tr. by G. Lombroso-Ferrero, 1 vol. (New York 1911); *La donna delinquenta, la prostituta e la donna normale*, in collaboration with Guglielmo Ferrero (Turin 1893, 3rd ed. by G. Lombroso-Ferrero, Milan 1915), partly tr. as *The Female Offender* (London 1895); *Il delitto politico e le rivoluzioni*, in collaboration with R. Laschi (Turin 1890); *Genio e follia* (Milan 1864; 6th ed. with title *L'uomo di genio*, Turin 1894), English translation (London 1891).

Consult: Lombroso-Ferrero, Gina, *Cesare Lombroso, storia della vita e delle opere narrata della figlia* (Turin 1915), and "Come mio padre venne all'antropologia criminale" in *Archivio di antropologia criminale psichiatria e medicina legale*, vol. xli (1921) 419–37; Kurella, H. G., *Cesare Lombroso als Mensch und Forscher*, Grenzfragen des Nerven- und Seelenlebens, vol. lxxiii (Wiesbaden 1910), tr. by Eden Paul as *Cesare Lombroso, a Modern Man of Science* (London 1911); Ferri, Enrico, "Cesare Lombroso e la funzione sociale della scienza" in *Rivista italiana di sociologia*, vol. xiii (1909) 547–62; Vervaeck, L., "La théorie lombrosienne et l'évolution de l'anthropologie criminelle" in *Archives de l'anthropologie criminelle*, vol. xxv (1910) 561–83; Sellin, Thorsten, "A New Phase of Criminal Anthropology in Italy" in American Academy of Political and Social Science, *Annals*, vol. cxxv (1926) 233–46; Goring, Charles, *The English Convict* (London 1913).

LOMONOSOV, MIKHAIL VASILYEVICH

(1711–65), Russian writer and scientist. The career of Lomonosov, the first Russian savant to receive a foreign training, was typical of the period of Peter the Great, when the Muscovite state was passing rapidly from feudal barbarism to the modern civilization of the west. Born in a fisherman's family in a village on the White Sea, he learned to read and write from a neighboring peasant and at the age of nineteen ran away to Moscow. There he was admitted to a monastery school, where he lived in indescribable poverty and showed an exemplary zeal in his studies. When the St. Petersburg Academy of Sciences applied to the Moscow Theological Academy for twelve good students to send abroad, Lomonosov, who was about to become a priest, was chosen as one of them. In Germany, where he spent five years, he received a thorough scientific training under the best natural philosophers of the time, including Christian Wolff. Recalled to Russia, he was appointed a member of the Academy of Sciences, which then functioned in place of a university; the rest of his life was spent in his official duties as an academician, which included, according to his own testimony, "lecturing and delivering public speeches, making new experiments, composing verses for solemn festivities, compiling rules of rhetoric for the Russian language and writing the history of my country."

Lomonosov's own inclination and genius lay in the direction of natural science, and had he been left to cultivate one branch of learning he might have made good his boast that Russia "could also give birth to a Newton." Today he is recognized as a neglected scientific genius of the first order, who in his published memoirs formulated the mechanical theory of heat, gave a corpuscular explanation of the elasticity of gases

and showed the continuity of the three states of matter. He opposed the phlogiston theory and anticipated by more than ten years Lavoisier's famous experiments on the calcination of metals. But his work in natural science remained very largely without influence on the main stream of scientific thought. Although Lomonosov was esteemed by his contemporaries as the greatest poet of the age, his verse is today unreadable. His real and effective achievement lay in his reform of the Russian language, which he transformed from an uncouth popular speech into a medium suited for cultural and educational expression. He wrote the first Russian grammar (1755), organizing it around the dialect of Moscow and in accordance with the general grammar of all languages considered in their natural evolution. The Russian orthography in use today is largely based on Lomonosov's work. In seeking to enrich the vocabulary he borrowed heavily from church Slavonic and developed a theory of three styles of discourse, in which the admixture of Slavonic varied directly with the solemnity and formality of the subject matter. This theory by impeding the secularization of style exercised to a certain extent an unfortunate influence on Russian literature. As a historian Lomonosov was by modern standards rhetorical, ultrapatriotic and uncritical. His educational influence on the formative period of Russian culture was as a whole enormous, ranking with that of Peter the Great in politics and government.

BENJAMIN GINZBURG

Works: *Sochineniya*, ed. by M. I. Sukhomlinov, vols. i–v (St. Petersburg 1891–1902).

Consult: Menshutkin, B. N., *Mikhailo Vasil'evich Lomonosov* (4th ed. St. Petersburg 1912); Imperial Academy of Sciences, St. Petersburg, *Lomonosovskii sbornik* (Symposium on Lomonosov) (St. Petersburg 1911); *M. V. Lomonosov: Sbornik statei* (Collection of essays on Lomonosov), ed. by V. V. Sipovsky (St. Petersburg 1912); Sobolevsky, A. I., *Lomonosov v istorii russkago yazika* (Lomonosov in the history of the Russian language) (St. Petersburg 1911); Pekarsky, P., *Istoriya Imperatorskoi Akademii Nauk* (History of the Imperial Academy of Sciences), 2 vols. (St. Petersburg 1870–73) vol. ii; Budilovich, A., *Lomonosov kak naturalist i filolog* (Lomonosov as naturalist and philologist) (St. Petersburg 1869); Mirsky, D. S., *A History of Russian Literature* (New York 1927) p. 57–62; Kropotkin, P. A., *Ideals and Realities in Russian Literature* (New York 1905) p. 23–25; Luther, Arthur, *Geschichte der russischen Literatur* (Leipsic 1924) p. 88–91. An exhaustive bibliography of works on Lomonosov in Russian and other languages is found in Fomin, A. G., and others, *Materiali po bibliografii o Lomonosove* (Materials for a bibliography on Lomonosov), Vistavka "Lomonosov I Elizavetinskoe vremya," vol. vii (Petrograd 1915).

LONGE, FRANCIS DAVY (1831–1910), English economist, barrister and civil servant. He studied at Oxford, where he became interested in John Stuart Mill's economic philosophy. He was admitted to the bar in 1858 and was appointed assistant commissioner of the Children's Employment Commission; in this capacity he was brought into contact with the practises and opinions of large employers of labor. In 1860 he published *An Inquiry into the Law of Strikes* (Cambridge, Eng.), in which he sketched the development of statute and common law as to the combinations of workers from 1350. Release from official duties enabled him to formulate his growing dissent from the current wage theory; in 1866 appeared the eighty-page tract *A Refutation of the Wage-Fund Theory of Modern Political Economy as Enunciated by Mr. Mill, M.P. and Mr. Fawcett, M.P.* (London 1866, reprinted Baltimore 1904). The essay attracted no attention and copies sent by the author to Mill and Fawcett were unacknowledged. Upon the appearance of Mill's recantation of the wage fund theory (*Fortnightly Review*, n.s., vol. v, 1869, p. 505–18, 680–700) Longe had the unsold copies of his tract bound in new covers with a new title page bearing the date 1869 and a prefatory note referring to Mill's retraction. Longe's indictment of the wage fund theory thus preceded and was entirely independent of Cliffe Leslie's criticism of 1868, Thornton's attack and Mill's recantation of 1869 and Walker's definitive assaults of 1874–75. As to doctrinal relationship a *Quarterly Review* critic in July, 1871 (vol. cxxxi, p. 229–63), declared flatly that Thornton had adopted Longe's refutation without acknowledgment. Francis A. Walker asserted that "the decided inferiority" of Thornton's treatment carried acquittal of this unpleasant charge. Taussig believes that Longe "very likely was not known to Thornton." The issue remains moot; but on the whole the theory of independent origin seems the most likely, with no graver reflection upon Thornton and Mill than an ungenerous failure later to refer to the earlier contribution of Longe. In 1883 Longe wrote a critical pamphlet of *Progress and Poverty* with a review of Henry George's and J. S. Mill's wage theories.

JACOB H. HOLLANDER

Consult: Introduction in reprint of Longe's *A Refutation of the Wage-fund Theory* . . . (Baltimore 1904).

LONGFIELD, SAMUEL MOUNTIFORT (1802–84), Irish economist and jurist. He became professor of political economy at Trinity

College, University of Dublin, and later professor of law at the same university; for a time he served as judge of the Irish landed estates court. He wrote on questions of land tenure and estate law but his chief importance lies in his economic writings. Although he adhered in general to the doctrines of the English classical school he offered many important innovations and corrections.

Longfield's main contributions were to the theory of distribution and the theory of international trade. He rejected the wage fund theory and held that wages are determined by the value of the product of labor in industries producing working class commodities, discounted by the prevailing rate of profits. He stressed the existence of non-competing labor groups but pointed out that even when there is no mobility between two crafts equality in wages can still be maintained through mobility between these and the "intermediate" occupations. He explained the rate of interest as determined on the supply side by the degree of willingness of savers to "sacrifice the present to the future" and on the demand side by the marginal value productivity of capital, which he analyzed with extraordinary anticipation of later doctrinal developments. He pointed out that profits comprise an element of return to capital and another element of wages for the skill and labor of superintendence. He denied that increase of population necessarily means lower wages, since growth of the arts or decrease in profits may offset the tendency toward diminishing returns to labor. He explained the mode of determination of the values of commodities produced under conditions of joint costs.

To the classical theory of international trade Longfield made pioneer contributions: he analyzed the way in which the existence of non-competing groups affects the choice of export and import commodities, the effects of tariffs and absenteeism on the terms of trade, the operation of comparative costs and reciprocal demand in determining the course of trade and the effect of the introduction into the exposition of the doctrine of more than two commodities. He supported on the whole the banking school doctrine and pointed out that the only significant difference between deposits and banknotes is the greater velocity of circulation of the latter. He also showed how credit expansion by one bank tends to induce similar expansion by other banks and suggested a bank credit theory of the business cycle, which ordinarily lasts approximately five years and which consists of ten successive stages.

JACOB VINER

Important works: *Lectures on Political Economy* (Dublin 1834; reprinted by London School of Economics and Political Science, Scarce Tracts in Economic and Political Science, no. viii, London 1931); *Four Lectures on the Poor Laws* (Dublin 1834); *Three Lectures on Commerce and One on Absenteeism* (Dublin 1835); "Banking and Currency" (anonymous) in *Dublin University Magazine*, vol. xv (1840) 3–15, 218–33, 371–89, and 611–20.

Consult: Seligman, E. R. A., *Essays in Economics* (New York 1925) p. 111–17; McDonnell, W. D., *A History and Criticism of the Various Theories of Wages* (Dublin 1888) sect. vi; Viner, Jacob, "The Doctrine of Comparative Costs" in *Weltwirtschaftliches Archiv*, vol. xxxvi (1932) 365, 378–79, 402, and 407.

LONGSHOREMEN is the American term for workers customarily called dockers in England, waterside workers in Australia and transport workers in many other countries. It includes all workers engaged in the loading or discharging of vessels' cargoes and covers a wide range of types from the responsible lightermen of London and the steady *Kontraktarbeiter* of Hamburg to the "banana fiends" of New York and the swarming coolies of Shanghai.

Longshoremen may be classified roughly according either to the place of work or to the commodity handled. They may be "hold men," who "break out" or stow away the cargo in the hold; "deck men," who operate the winches, give signals and assist in swinging the "draft" from hatch to pier; or "pier men," who move the cargo to or from the ship's side. The first two groups require considerable skill and experience, the third relatively little, but all three require strength and endurance. Many workers, however, are able to specialize in handling certain commodities (often to the virtual exclusion of all others), among them grain, coal, lumber, ore and bananas. And even among the handlers of general cargo, who comprise the bulk of the workers and who accept as part of the day's work every strange product which the hold of a vessel may disgorge, there are jealously guarded lines of distinction between the deep water longshoremen, the worker in coastwise shipping and the despised "shenango," who handles the contents of harbor craft.

Longshore work has long been a synonym for casual labor and its attendant evils. Periods of enforced idleness have always alternated with periods of long hard labor; each employer has striven to have a large labor reserve available to

take care of peak activity. In the old days longshoremen, often hungry and despairing, engaged in tooth and claw struggles with each other to get jobs. Earnings were usually below the barest subsistence level. In England the first real improvement came after the London dockers' strike in 1889, resulting in higher pay, partial regularization of employment and improved methods of hiring. The strike moreover compelled investigation of the prevailing bad conditions and led to some remedial legislation, including accident prevention and compensation. The success of the strike had world wide effects, stimulating union organization and legislation; but in the United States it was not until 1927, long after accident insurance had become an accepted practise, that longshoremen were brought under the provisions of the workmen's compensation law. Decasualization in some ports has also materially improved conditions by regularizing employment and equalizing earnings. But despite improvements most of the fundamental evils of longshore work still persist; in the ports of the Orient, Africa and South America conditions are probably as bad as formerly.

The total number of longshoremen is unknown, and only certain suggestive approximations may be hazarded. The United States has perhaps 120,000, of whom some 50,000 are in New York alone. London has about the same number as New York, Liverpool about 20,000, Hamburg and Antwerp some 15,000 each and Rotterdam about 10,000. The numbers fluctuate even more markedly than do those of factory workers, because the docks act as a catchall for the overflow from other trades and for the failures and misfits from all walks of life.

All attempts to calculate average earnings are also merely suggestive approximations. There are, it is true, plenty of wage rates; but so great is the irregularity of hours worked that wage rates and actual earnings are often widely separated. The 1932 wage scale for the North Atlantic ports, for instance, provided for $.85 per hour and $1.20 per hour overtime, based on a week of 44 hours. And yet average earnings in so far as they may be estimated for New York were probably not more than $15 to $20 per week even for the relatively steady men. Earnings are only slightly higher in periods of prosperity; in 1928 the majority of New York longshoremen earned less than $30 weekly, and many earned as little as $10. The great majority of other ports would show even lower figures. With the exception of small groups of permanent workers in decasualized ports the earnings of all longshoremen, whether hired individually or in gangs, whether paid by the hour or by the piece, are irregular and on the average very low.

Working conditions along the water front present many peculiar and difficult problems. Longshoremen must go from pier to pier in search of work. Hiring is usually still done at each pier by a foreman who has autocratic power and who picks his men arbitrarily from a "shape" of job seekers which forms two or three times daily. If a man fails to be selected, it is practically always too late to apply elsewhere. And even if he is chosen he never knows whether the work will last for one hour or twenty hours. Petty bribery of the hiring foreman is frequently invited and sometimes necessary; sometimes longshoremen have to "share" their meager earnings with the foreman. Unions measurably reduce the bribery. Waiting rooms, wash rooms and similar facilities are usually crude and very often lacking. The work is hard, with much heavy lifting of cargo, and exposure is part of the routine. Men who have been idle for days may work uninterruptedly on a particular job from twenty to thirty hours except for time off for meals. In every country dock work is near the top in the lists of dangerous occupations. Tuberculosis, pneumonia, bronchitis, cancer and rheumatism are common; while fatigue, faulty inspection of gear, undermanning, overspeeding and chance combine to produce a high accident rate.

Underemployment has always been a major problem of dock labor, and recently technological unemployment has added still further to the hazards of job hunting. It has not yet assumed alarming proportions among deep water longshoremen, who still work with relatively simple mechanical aids; but on the Great Lakes, with their heavy traffic in grain, ore, coal and other bulk commodities which lend themselves readily to mechanization, it has transferred whole fields of activity from men to machines. Technological unemployment in other industries has moreover increased the pressure of casuals seeking jobs on the water front.

In the face of such conditions and with a labor supply chronically in excess of demand and containing many racial groups and a large percentage of casuals in addition to a nucleus of steady workers, trade union organization has not been easy. Its achievements are therefore all the more significant. In England the first small groups of the late 1880's have been transformed into the great Transport and General Workers' Union.

The International Longshoremen's Association of the United States, including in its membership perhaps one third of all American dock workers, has been less successful, although its agreements govern working conditions in many important ports of the Atlantic and Gulf coasts. In Australia the Waterside Workers' Federation has repeatedly demonstrated its strength, often to the discomfiture of the entire commonwealth. Germany, Holland and the Scandinavian countries also have strong dockers' organizations. Many of these national bodies have in turn combined to form one section of the growing International Transport Workers' Federation, which includes seamen and land transport workers as well as longshoremen. The longshoremen's unions have frequently been a progressive force in the labor movement. They stimulated the growth of the "new unionism" in England, Ireland and Australia with the stress on militancy and industrial as against craft organization; in Hamburg the harbor workers organized into one strong union with substantial control over the labor market.

On the whole collective bargaining and arbitration are still on a precarious footing. Most of the oriental, African and South American ports are virgin territory from the standpoint of permanent union organization; and even in the well organized ports of the world the strike has long been a favorite weapon. Some of the most spectacular strikes of modern history, such as those of 1889 and of 1912 in London, that of Belfast in 1907, those of 1887 and 1907 in New York (the former led by the Knights of Labor) and several major strikes in Australia, have centered about the docks. Only during the years of the World War, when their position in international commerce, strategic at all times, was still further strengthened by the emergency, did European and American dock workers agree to accept limitations upon their right to strike.

Whatever their method, organized longshoremen have always been interested primarily in wages and hours and have only recently shown sustained and aggressive interest in the more fundamental problem of decasualization. The crying need of all dock workers has long been for greater regularity of employment and of earnings, which is most difficult of attainment because each employer has tended to mobilize about his own piers a labor reserve large enough to meet his demands on his busiest days. The resultant normal oversupply of labor and haphazard distribution of jobs can be remedied only by a carefully planned scheme of decasualization which must stress at least three major points: registration to limit the total number of men who are eligible to seek work in any given port, regulated in accordance with the port's varying needs; a centralized or at least coordinated system of hiring, in which employers hire labor from a central office instead of individually, with provision for the rapid transfer of applicants from the less busy to the more busy areas, thus substituting a smaller but unified and mobile reserve for the present stagnant pools of labor; and a guaranteed minimum weekly wage to a nucleus of steady, experienced workers which will provide each employer with the backbone of an efficient and dependable labor force. Further desirable although not vital refinements of decasualization include a central pay office, organization of both employers and workers in order to facilitate the selection of a joint committee to be vested with the power to determine policies, the dovetailing of seasonal work and a system of rotation which will serve to equalize earnings among the individuals representing each grade of labor. The system of decasualization assures longshoremen an equal chance of securing available work, eliminates the foremen's arbitrary power and regularizes employment, hours and earnings.

Hamburg and Liverpool stand out preeminently among the world ports which have so far experimented with decasualization. They began to carry out their plans in 1907 and 1912 respectively and were the real pioneers in the field, although London had certain piecemeal measures at a somewhat earlier date. Other decasualized ports include Rotterdam, Amsterdam, London, certain Scandinavian ports and Antwerp, which was decasualized as recently as 1929. In the United States only Seattle, Los Angeles and Portland are represented, although Boston, Houston and Galveston have developed certain features which are suggestive of decasualization. Seattle, the first American port to introduce decasualization in 1921, has achieved a degree of success which may well challenge the attention of many larger ports. The general principle of decasualization, modified to suit the requirements of each individual port, is indispensable in dealing with the problems of dock labor. Unfortunately decasualization is occasionally bound up with anti-unionism; in all three decasualized American ports the employers refuse to recognize the union, and the system is consequently strongly opposed by the Inter-

national Longshoremen's Association. But the experience of Hamburg, Liverpool and many other European ports indicates that decasualization and unionism may be harmoniously combined and that moreover the unions may become the most effective instruments of decasualization.

ELMO P. HOHMAN

See: CASUAL LABOR; PORTS AND HARBORS.

Consult: Barnes, C. B., *The Longshoremen*, Russell Sage Foundation, Publications (New York 1915); Lascelles, E. C. P., and Bullock, S. S., *Dock Labour and Decasualisation*, London School of Economics and Political Science, Studies in Economics and Political Science, no. lxxiv (London 1924); Mess, H. A., *Casual Labour at the Docks*, University of London, The Ratan Tata Foundation (London 1916); Williams, R., *The Liverpool Docks Problem* (Liverpool 1912), and *The First Year's Working of the Liverpool Docks Scheme* (London 1914); Joint Executive Committee of Longshoremen and Truckers and Waterfront Employers, "Decasualizing the 'Beach' at Seattle" in *Survey*, vol. xlix (1922–23) 96–97; New York City, Mayor's Committee on Unemployment, *Report on Dock Employment in New York City* (New York 1916); Great Britain, Ministry of Labour, Court of Inquiry, *Transport Workers—Court of Inquiry*, Cmd. 936–37, 2 vols. (1920); Shadwell, Arthur, *The Problem of Dock Labour* (London 1920); United States, Bureau of Labor Statistics, "Labor Productivity in Cargo Handling and Longshore Labor Conditions," *Bulletin*, no. 550 (1932), and "Longshore Labor Conditions in the United States" in *Monthly Labor Review*, vol. xxxi (1930) 811–30, 1055–69; Stern, Boris, "Longshore Labor Conditions in the United States" in *World Ports*, vol. xix (1930–31) 235–73; Gottschalk, Max, "Employment and Unemployment in Some Great European Ports" in *International Labour Review*, vol. xxi (1930) 519–39; "Antwerpen, de haven en de havenarbeiders" in *L'Églantine*, vol. i, no ix (Brussels 1923); "Protective Measures and Regulations for Port Labour" in International Transportworkers' Federation, *I. T. F. Documents*, n.s., no. v (Amsterdam 1927); Tillett, Benjamin, *A Brief History of the Dockers' Union* (London 1910); Mess, H. A., *Casual Labor at the Docks* (London 1916).

LÓPEZ, VICENTE FIDEL (1815–1903), Argentinian historian and statesman. López was the son of the author of the Argentinian national anthem; from his childhood he came into contact with the outstanding politicians and intellectuals of the Plata River region from the initial days of independence until the difficult period of the organization of the nation, and he was influenced by them in the direction of patriotism and of intellectual pursuits. He became a member of the reformist group known as the Asociación de Mayo, fought the dictatorship of Rosas and lived in exile in Chile, where he helped to initiate an intellectual revolution, and in Uruguay. Upon his return to Argentina he participated in national politics but was relatively unsuccessful because of his aggressive and inflexible character. In Uruguay he taught at the University of Montevideo and from 1873 to 1876 at the University of Buenos Aires. He contributed considerably to the political, legal, economic and educational literature of Argentina but his most important work is in history, where he made bold incursions into various divisions of the subject, a noteworthy example being his contribution to American prehistory which was published, in a French translation by the orientalist Gaston Maspero, as *Les races aryennes du Peron* (Montevideo 1871). His chief works, however, are those dealing with Argentina. Of particular importance is his *Historia de la República argentina. Su origen, su disarollo político hasta 1852* (10 vols., Buenos Aires 1881–93; new ed. 1926), in which as in other works he made frequent use of the verbal information he had received from the protagonists in the great events in the history of his country, and which is therefore regarded as the greatest repository of the oral tradition of Argentina. Abridgments were prepared by the author for use in the secondary schools. López possessed great literary talent and as a historian sacrificed much exact documentary data to his desire for literary success. He was the chief representative of the school of the philosophy of history in Argentina. His history was largely political, for he held that the country had no other kind of history. He engaged in a controversy with Bartolomé Mitre, the leader in Argentina of the erudite school of historiography which was concerned particularly with the accuracy of facts; and as a result of the encounter López demonstrated that his model was Thucydides. López' influence has been felt by those who seek to explain the phenomena of history and especially by the sociological school of historians.

RÓMULO D. CARBIA

Works: "Autobiografía" in *Biblioteca*, vol. i (1896) 325–55, reprinted in *Evocaciones históricas* (Buenos Aires 1929); *Debate histórico*, 2 vols. (Buenos Aires 1882; new ed., Biblioteca Argentina series, 3 vols., 1916); *Resultados generales con que los pueblos antiguos an contribuido a la civilización de la umanidad* (Santiago, Chile 1845); *La revolución argentina*, 4 vols. (Buenos Aires 1881); *El banco (sus complicaciones con la política en 1826 y sus transformaciones históricas* (Buenos Aires 1891); *Curso de derecho romano bajo un plan nuevo* (Buenos Aires 1872).

Consult: Ibarguren, C., *De nuestra tierra* (2nd ed. Buenos Aires 1926) ch. vii; Rojas, R., *La literatura argentina*, 8 vols. (Buenos Aires 1924–25) vol. vii, ch. iv; Carbia, R. D., *Historia de la historiografía*

argentina, vol. i– (La Plata 1925–); Pestalardo, A., *Historia de enseñanza de las ciencias jurídicas y sociales en la universidad de Buenos Aires* (Buenos Aires 1914); Gonzales, Julio, *La emancipación de la universidad* (Buenos Aires 1929).

LÓPEZ DE PALACIOS RUBIOS, JUAN (*c.* 1450–1524), Spanish jurist. López de Palacios Rubios taught at the University of Salamanca, where he had studied, and at the University of Valladolid. He gained the confidence of Ferdinand and Isabella and assisted them in many of their important acts. Upon the dismissal of the members of the high court, or Chancillería, of Valladolid in 1491 he was one of the judges appointed to supersede them; when a similar court with equal powers was established at Ciudad Real he assisted as a member in the development of its tendencies. He participated in important matters involving relations with the papacy, and as a member of the Council of Castille (1504–24) he took an active part in the direction of affairs connected with the Indies and won the approval of the rigorous critic Bartolomé de las Casas. In Spanish juridical science López de Palacios Rubios represents a bridge between the Middle Ages and the Renaissance. His works, which were much consulted by later jurists, evince the somewhat undigested erudition of the mediaeval treatises; but they display a capacity for writing good Latin that other jurists of the time, such as Alonso Díaz de Montalvo, did not possess. His thesis that the American indigenes were not slaves constitutes the clearest title to fame of the Salamancan school of international law. But when he entered the realm of theory as an apologist of the Catholic kings he displayed certain weaknesses; he was willing to uphold the claims of monarchy as against papacy to the widest extent or to concede the most exaggerated powers to the latter, according to the manner in which the argument served the interests of his royal masters. It was neither as a scholar nor as a theorist, however, that he made his chief contribution to Spanish law but rather as a practical jurist who noted the defects of the contemporary law and applied adequate remedies in legislative projects. He cooperated in the preparation of the *Leyes de Madrid* of 1499, designed to improve the administration of justice. His influence upon the preparation of the highly important *Leyes de Toro* (completed in 1505), which were designed to clarify the existing law and which made important innovations in the realm of private law, particularly family law, was very great. He played a major part in the compilation of the *Leyes y privilegios del concejo de la Mesta* in 1511.

ROMÁN RIAZA

Works: *Opera varia*, ed. by Juan de Barahona (Antwerp 1616).

Consult: Bullón y Fernández, Eloy, *Un colaborador de los reyes católicos: El Doctor Palacios Rubios y sus obras* (Madrid 1927).

LORIMER, JAMES (1818–90), Scottish jurist and political theorist. Lorimer was the son of the manager of an aristocratic estate and received his education at Edinburgh, Berlin, Bonn and Geneva. In 1862 after an indifferent career as an advocate he was called to the University of Edinburgh, where he lectured as professor of public law and of the law of nature and of nations until his death. In addition to legal works he published many occasional and controversial essays on political, ecclesiastical and educational questions. One of the original members of the Institute of International Law, he was the only British jurist of the day who spoke the continental language of natural law, and consequently he was long his country's academic spokesman in its delicate relations with warring foreign states.

Opposition to democracy, particularly in its Benthamite formulation, is central in Lorimer's writing. He was a member of the Conservative party and a vigorous pamphleteer against what he termed "vertical extension" of suffrage, advocating instead a system of plural votes allotted on the basis of wealth, education, age and professional position. In the field of private law he was a vigorous defender of existing inequalities in property distribution against radical and socialistic attacks. A similar insistence upon the importance of natural inequalities led him, in the field of international law, to challenge the postulate of the equality of states, to defend the principles of intervention and exterritoriality, to deny Moslem or communist states the right to recognition and to include in his draft for an armed and effective league of nations provision for a council representing five or six powerful nations.

These practical proposals are organized by a philosophy of natural law which regards human law as declaratory of divinely established fact and holds the rectification of divinely implanted inequalities to be beyond the proper province of law. Lorimer's juristic thought is pervaded by the theologic assumption that what is good ultimately prevails, so that he finds it unnecessary

to distinguish between historical generalization and ethical criticism. His appeal to self-evident principles, in the manner of his teacher Sir William Hamilton and of the Scottish school of realistic philosophy, is commonly an appeal to generalizations from chemical or biologic laws (he tells us that he learned more law from the chemist Mitscherlich than from the jurist Puchta) or to political and ethical principles generally accepted by men of his own religion, race and class. Despite his narrow ethical outlook Lorimer served to free the study of law in Scotland from its provincial, trade school tradition by bringing students into contact with continental legal thought and by emphasizing the dependence of legal science upon economics, sociology, criminology, philosophy and theology.

FELIX S. COHEN

Important works: *Political Progress Not Necessarily Democratic* (London 1857); *Handbook of the Law of Scotland* (Edinburgh 1862, 6th ed. 1894); *The Institutes of Law* (Edinburgh 1872, 2nd ed. 1880); *The Institutes of the Law of Nations*, 2 vols. (Edinburgh 1883–84); *Studies National and International* (Edinburgh 1890), with biography and bibliography.

Consult: Flint, Robert, "Professor Lorimer" in *Juridical Review*, vol. ii (1890) 113–21.

LOTTERIES. The lottery is an arrangement in which an entrepreneur contracts with several persons in exchange for a certain payment to pay out sums of money or other valuable goods to those among them selected by a process depending upon chance. In this it resembles many forms of games of chance, which in turn are a subdivision of gambling (*q.v.*). Lotteries with money prizes are more common than commodity lotteries, or raffles, but mixed lotteries also exist, in which the winner may get either money or commodities as he prefers. Upon payment of his contribution, or stake, generally in cash but sometimes masked in another form, the participant usually gets a ticket, or chance, bearing a number; if the corresponding number is drawn he is entitled to a prize. Tickets which fail to win anything are called blanks. In the so-called interest lotteries all ticket owners get back at least the amount of their stake but only after a long period of time and without any accrued interest. In all lotteries (with very minor exceptions such as lotteries conducted by a small group entirely for its own amusement, as those arranged by ocean travelers on the basis of the day's mileage of their ship) the total of all the prizes plus the administrative costs is less than the sum of the prospective paid in stakes; the holding of a lottery therefore yields a profit to the entrepreneur, unless too few chances are sold.

Lotteries may be run by national governments, by other public bodies, such as states and municipalities, by civic organizations and by private entrepreneurs. Most states supervise and tax lotteries not conducted by the state itself. The lottery may be used to increase governmental revenues, to raise funds for charitable or other civic purposes, to float a long term public loan, to provide popular amusement, to attract customers in business competition or, as a rule only clandestinely, to provide private profit. Lotteries may also be classified according to their procedural technique.

The following description of the most important forms of lottery combines procedural and functional bases of classification.

The lottery with simple number draw is used as a rule only for charitable purposes, usually as a commodity or a mixed lottery. The price of the tickets is uniform and small and their number very large, while the number of blanks is often 80 percent of all tickets. In the draw all the ticket numbers are placed in an urn or in a wheel of fortune, and as many numbers are drawn as there are prizes. The prizes are allocated to the several numbers either on the basis of the order in which the numbers are drawn or according to the prize indicated on a slip drawn from another urn or wheel of fortune simultaneously with the ticket number. Since the total value of the prizes is always less than the total paid in stakes, the probability value (the product of the possible prize and the probability coefficient) which the ticket purchaser receives for his stake is necessarily smaller than the price of the ticket. The entrepreneur's profit, provided all the tickets have been sold, is the difference between the total paid in stakes and the sum of the total value of the prizes and the overhead charges. If all the tickets are not sold, his profit depends upon whether the big prizes are won by sold or unsold tickets. It is therefore advantageous in lotteries in which experience has shown that only a small percentage of the tickets is likely to be sold, so to allocate the sum set aside for prizes that one prize, the "grand" prize, is very large, while the other prizes are correspondingly smaller. In such cases it is probable that the grand prize will be won by an unsold ticket. For example, Austria has for many years conducted for the benefit of a first aid organization a lottery in which the grand prize, an automobile, has never been won.

The class lottery, which is found only as a money lottery, is the most important form of government lottery. Its principal characteristic is that the draw does not take place all at once but in several sections or classes at certain intervals of time, the ticket price being divided into as many equal parts as there are sections. Only the proportionate partial payment need be made to participate in the drawing of the first class. Tickets are also customarily subdivided into shares, purchase of which entitles the holder to a proportionate share of the prize if the ticket's number is drawn. Tickets which win a prize in the first class are withdrawn from further play, but the remainder of their purchase price need not be paid. To participate in the drawings of the following classes, however, a ticket which did not win a prize in the first class must be renewed by payment of the proportionate price for each of the subsequent classes. As a rule two wheels of fortune are used in the draw, a number wheel and a prize wheel. By far the largest number of prizes as well as the biggest prizes are drawn only in the last class, so that one has to pay the full ticket price to be able to win a major prize. The present Austrian class lottery, established in 1913, in which prizes are paid out without any deduction and are subject to no tax, is an example of a modern class lottery. Two class lotteries are held annually, the interval between the first and final draws being somewhat less than five months. There are 84,000 tickets with 42,000 prizes in five classes. The price of a ticket is 240 schillings, or 48 schillings for each class; since tickets are also sold in fractional denominations (half, quarter and eighth tickets), one can participate in the first class for as little as 6 schillings. The smallest prizes equal the price of the ticket, while the grand prize totals 300,000 schillings; in addition a premium of 500,000 schillings is awarded the last drawn prize of 1000 schillings or more. The theory of probability shows that if the player enters only the first class he has a 9.44 percent chance of recovering his stake, while if he continues through the second class his chance is 11.09 percent, through the third 13.13 percent and through the fourth 15.04 percent; if he stays through the fifth class his chance of recovery is 70 percent. Hence it would be unwise from the player's standpoint to fail to pay the renewal fee and thus stop playing before reaching the fifth class. Fifty percent of the players lose all their stakes and 36 percent recover, while only the remaining 14 percent receive more than they put in. Of the total sum paid in for tickets (19,142,000 schillings) 30 percent is retained by the government while 70 percent is distributed as prizes. Of the government's 30 percent there remains after deduction of the commissions of the lottery bureaus and other overhead charges an average of 3,900,000 schillings, so that the two annual class lotteries net the state about 7,800,000 schillings. In Austria this net profit is independent of the results of the draw, since the lottery bureaus (usually banks) must contract for all the tickets; in other countries, however, where not all the tickets are always sold, the net profit of the class lottery also depends upon chance.

In the number lottery, tickets are not sold at a fixed price, but the size of the stake is determined by the player himself and the prizes are not set in absolute figures but in multiples of the paid in stake. Every participant can play one or more numbers between 1 and 90; several players can bet upon the same number, and all these players win if that number is drawn. Chances apply only to one definite draw; in each draw five numbers between 1 and 90 are drawn. The player has the following betting possibilities, the prize differing in each case: indefinite selection, in which he wins if his number is among the five winning numbers; definite selection, in which he wins only if the number chosen by him appears among the five winning numbers in the order picked by him; ambo, terno and quaterno, in which he wins if two, three or four numbers respectively of those picked by him appear among the five winning numbers. Theoretically the player might also bet upon quinto, having to guess all five winning numbers, but this type of bet is not allowed in the existent number lotteries because of the extremely slight probability of winning (1 to 43,949,268); Austria also forbids betting upon quaterno. The probability value which the player gets in exchange for his stake is in every type of bet less than the stake. In Austria, for example, it is about 78 percent of the stake for indefinite selection and only 41 percent in terno play. That is why on the average the entrepreneur wins and the players lose (in 1930 the actual prize payments in Austria were 57.3 percent of the paid in stakes). In both Italy and Austria a tax on winnings reduces even further the player's chance of recovering his stake. In order to protect itself against the danger of excessive losses where many players bet upon the same numbers the lottery administration reserves the right to close certain numbers or to reduce the stakes before the draw. The amounts

wagered in this type of lottery are still on the increase and reached 18,400,000 schillings in Austria in 1930. Certain policy games or pools in the United States bear some resemblance to the number lottery, in that the prizes are determined by the last three or four integers in such large figures as the day's bank clearings in a particular city or the balance of a Federal Reserve Bank.

Lottery loans are a combination of loan and lottery: the entrepreneur (usually the government or a privileged body) sells a long term loan in the form of bonds (also called lottery chances), agreeing to pay certain holders selected by lot premiums of various amounts in addition to the paid in value. Owners of undrawn bonds receive the face value of the bond (chance loans) or the face value plus interest at a low rate (premium loans). Thus the player loses at most all or part of the interest on his capital (interest lottery). The funds for the premiums are obtained in non-interest bearing lottery loans from the interest on the loan capital and in interest bearing loans from the difference between the low interest rate paid and the prevailing higher rate of interest, and furthermore from the compound interest, if interest is paid only upon the drawing of the bond. The lottery loan provides cheaper credit than is ordinarily obtainable at the time the loan is floated; this explains its prominent role in the financial history of many governments. It may result in a loss to the loan debtor, however, if the prevailing interest rate drops during the term of the loan. Unless barred by law lottery loan bonds are traded on the stock exchanges as ordinary securities. The public may thus profit through the purchase and sale of the bonds as well as through the premiums. In most lottery loans the draw is effected in two sections separated by an interval of time. The series is drawn first, and after the lapse of several months the winning numbers are drawn from it. In the interim the bonds of the series drawn rise on the stock exchange. Finally, the lottery loans offer the further possibility of selling only the chances of a certain bond's winning in a certain draw (so-called rights). For a small sum the purchaser obtains the right to the entire premium if the bond is drawn in the draw; if it is not drawn, he loses all he paid for the right.

Lotteries for popular recreation consist predominantly of small commodity lotteries conducted at charity festivals, fairs, amusement parks and similar places. The procedure varies. Sometimes each player purchases by chance or selection one or more numbers within a definite numerical range, and a wheel of fortune determines the winning number. Sometimes he picks one of a group of rolled up tickets, prizes varying in value having been set up in advance for the tickets bearing certain numbers. This is also the principle of the punchboard, which is used for commodity and money prizes in the United States.

Advertising lotteries involve the distribution by business men of money or commodity premiums among their customers by lot or by some other form of chance. Often each customer has, as such and without any additional payment, a chance of winning a prize, and the winner is picked by the order of sales or by some similar circumstance. Again, every package of a commodity may contain a token—a letter or a picture—invisible from the outside; and anyone getting as the result of several purchases a certain group of such tokens—a series of pictures or the letters forming a certain word—receives a prize. Where only those customers who solve a puzzle set by the entrepreneur are eligible for the premiums (so-called puzzle contests), a lottery exists only when the problem is so simple that the average person can solve it correctly or when the correct solution of the problem cannot be obtained by intellectual effort or skill but must be guessed; for in both of these cases chance governs the distribution of the prizes. Where more than one entrepreneur participates in an advertising lottery, each generally contributes to the cost of the prizes roughly according to his sales or capital; where such a lottery is conducted by an organization independent of the merchants themselves, the management of the lottery may derive a profit from the difference between the fees paid in by the participating stores and the sum of the value of the prizes and the cost of administration.

The term sweepstakes, formerly used to denote horse races in which the winner takes all the prizes, has come to be associated with a particular form of lottery based on various important horse races. A great many contributors buy chances on a particular race; some time before the race each horse is assigned to a particular ticket holder, the great majority drawing blanks and thereby losing their stakes; the holder of the ticket on the horse which finally wins the race receives all the stakes, or they may be divided among the holders of the tickets on the first three horses. A contributor to whom a horse is assigned in the draw can frequently dispose of all

or part of his ticket before the race at a substantial profit, varying according to whether his horse is a favorite or an outsider. Sweepstakes, which seem to have first developed in large numbers in England after the abolition of lotteries in 1826, were declared illegal as lotteries in that country in 1845; the legalization of charity sweepstakes by the Irish Free State in 1930 for a period of four years has complicated the problem of preventing sweepstakes transactions in England. Important sweepstakes, such as the Calcutta Sweeps and the Irish Free State Hospitals Sweepstakes, are patronized by people from all over the world.

The lottery did not exist in antiquity, although decisions were made by lot for various purposes, such as the distribution of land (distribution of the Promised Land among the Twelve Tribes of Israel, the allocation of provinces to the governors in Rome and the allotment of tilled land in the ancient Germanic village community) and the determination of guilt in primitive Germanic judicial procedure (ordeal). The commodity lottery originated in the Middle Ages in Italy, where merchants disposed of unsalable goods by means of a lottery procedure; aided by permissive interpretations of church law such lotteries spread quickly throughout Italy and were very common by the beginning of the sixteenth century. The first money lottery was probably established in Florence in 1530 for the benefit of the state. Commodity lotteries were established by various cities in Holland in the fifteenth century; in the eighteenth century the technique of the class, or Dutch, lottery, which is still used by the Dutch government, was evolved. Lotteries soon spread from Italy and Holland to France, Spain, Germany and Austria. Governments began to exercise the right of supervisory regulation to protect the public against fraud and subsequently ran lotteries themselves as a source of income. As the sovereign's power increased, the right to run lotteries was made his sole monopoly (the royal lottery prerogative), which he might lease to others. In 1569 the lottery was introduced into England by Queen Elizabeth as a state lottery and was utilized by England as a source of state revenue until 1826. The number lottery, or lotto, arose in Genoa at the beginning of the seventeenth century; it was patterned after the bets made upon the names of the five new senators, who were chosen by lot in Genoa from the list of candidates, the numbers from 1 to 90 being substituted for the candidates' names. This form of play spread so rapidly throughout Italy that it supplanted the ordinary lottery, and even today the state lottery in Italy is of this form. During the second half of the seventeenth century the Genoese number lottery was imitated in France, Germany and Austria, whose governments granted concessions to Italian entrepreneurs; but it held its own only in Austria, where it has been run by the government itself since 1787. In Germany it was supplanted by the class lottery system patterned on the Dutch model, which was first established by the cities and has been operated by the Prussian state almost uninterruptedly since 1794. The interest lottery was first tried in Austria in 1721 with a class lottery planned for twenty-five years, which was operated by the *Orientalische Kompagnie*, and soon collapsed; it developed during the nineteenth century in the form of numerous governmental lottery loans.

After the French Revolution the lottery was opposed by liberals as a disreputable source of state revenue; this led to the abolition of state lotteries in England in 1826 and in France in 1836. France permits only licensed private lotteries for the benefit of charity and the fine arts and lottery loans issued by municipal and local governmental agencies with the sanction and approval of the national government. Except for art unions, specially exempted by an act of 1846, English law permits no lottery without specific parliamentary sanction, which has not been granted since 1826. During and immediately after the World War, however, temporary administrative relaxation tacitly sanctioned a great many charitable lotteries, and in 1918 legislation intended to legalize lotteries by registered war charities almost passed the House of Commons after having been accepted by the House of Lords. In the same year a proposal that England float a lottery loan to ease the financial burden was adversely reported on by a select committee which investigated it. Another attempt to secure parliamentary action legalizing lotteries for charitable, scientific and artistic purposes was made in 1932. In Germany, on the other hand, the Preussisch-süddeutsche Klassenlotterie, based upon agreements embracing several states, covers almost the entire Reich. It holds two class lotteries annually, each having 800,000 tickets and awarding prizes totaling 114,260,100 marks, a deduction of 20 percent being made by the administration when the prizes are paid. Moreover the national government levies a tax of 20 percent upon the sale of the lottery tickets. Saxony and Hamburg operate lotteries of their

own. Austria operates three types of state lottery (class, number and state charity), levying a tax of 25 percent upon all winnings except in the class lottery. In addition there are private lotteries for civic purposes licensed by the government as well as governmental loan lotteries. Numerous lotteries, most of which were established for the purpose of aiding education, existed in the United States in the early part of the nineteenth century; some were licensed by the state governments, others operated by these governments themselves. The Continental Congress in 1776 authorized a class lottery for the benefit of the soldiers in the field, and a form of premium loan was floated by the new nation in 1784. As a result of growing opposition lotteries were prohibited by New York and Massachusetts in 1833; other states followed their example, and after Congress prohibited the use of the mails for lottery purposes in 1890 the last of the privileged lotteries, the Louisiana State Lottery, which had been operated by a private company under a franchise bringing the state $40,000 a year, transferred its operations to Honduras, where it still exists. The operation of a lottery and the sale of tickets are punishable in all states, while many states also penalize various other acts in connection with lotteries. In addition to the use of the mails for lottery purposes federal law also penalizes the importation, interstate transportation, traffic transit over any part of the United States and receipt of all printed matter pertaining to a lottery. Despite these prohibitions lotteries of various kinds still flourish in the United States. Like the United States, Japan forbids all lotteries. In the Union of Soviet Socialist Republics all lotteries were forbidden on July 24, 1923, but a statute of January 1, 1930, sanctioned such lotteries as might be approved in each individual case by the People's Commissars for Finance and for Workers' and Peasants' Inspection. The government at one time floated a premium loan but now conducts no state lottery.

The penal provisions against lotteries which exist in almost all countries are intended to prevent the excessive spread of gambling and to protect the public against fraud, as well as to safeguard the governmental monopoly in those countries which operate national lotteries and to assure effective revenue and regulatory control in those which permit private lotteries under requirements of license, tax or both. The criminal concept of a lottery is much the same in all countries, but it is impossible to distinguish it clearly, on the one hand, from other games of chance, which are subject to other penal provisions in most countries, and, on the other, from legal advertising inducements and contests. The apparent distinguishing feature—one entrepreneur contracting with a number of players who are not juridically interrelated—is also present in gambling schemes of the type used in Monte Carlo, which are not considered lotteries. In the United States three characteristics have generally been recognized as prerequisite in order to establish an arrangement as a lottery: distribution of prizes, dependence upon chance and consideration for the right of participation; the application of these general criteria to particular cases has proved extremely difficult, however, especially in certain forms of advertising schemes.

The nature and forms of the lottery make it a problem of almost all branches of the social sciences. Two motives induce the player to exchange his money for a probability value smaller than his stake. The first is the satisfaction of a need which the lottery affords through the feeling of daring and through the tension of awaiting the results of the draw. The greater the interval of time between the purchase of the ticket and the draw, the less the influence of the gambling spirit, which is therefore most prominent in the smaller lotteries for popular recreation and in the number lottery, less prominent in the class lottery and least so in lottery loans. The second motive, the hope of winning, is based on the peculiar law of valuation according to which the subjective valuation of a potential prize does not diminish proportionately with the probability coefficient but tends to remain larger than the product of the value of the prize and the coefficient. Thus with equal probability values the small chance of winning a large sum is valued more highly than the large chance of winning a small sum. According to the theory of marginal utility the high utility value of the share of his few possessions which the poor man uses as a lottery stake should make such purchases even less economically rational. Whereas in property insurance, however, where the policyholder also values the slight probability of a large loss above its objective probability value, the law of valuation and the theory of marginal utility support each other, since a quantity of goods to be lost is involved, in the lottery this law of valuation is so strong as to overcome the opposite pull of the marginal utility factor. Superstition often strengthens the player's motives: many optimists believe that fate has destined them for good fortune and that they must "open the door to op-

portunity" by buying a ticket. In the number lottery bets upon certain numbers are motivated by dreams, prophecies and the like; modern astrology even endeavors to set up relationships between lottery winnings and horoscopes. Significant from a sociological and economic standpoint is the fact that the smaller lotteries and the number lottery are patronized largely by the proletariat, whereas the patrons of the class lottery and lottery loans are drawn chiefly from the middle class. Hence the governmental number lottery acts like an antisocial taxation of the poor; in addition it possesses the disadvantage that the prizes are won by people who, experience has shown, are not apt to make thrifty use of unearned capital. In middle class circles, however, because of characteristic habits of thrift it is more likely that lottery prizes will be employed for capital accumulation. Furthermore from the standpoint of the possibility of productive investment by the lottery administration of the large sums put into them by the people (in 1930, despite the poverty of the country and although the total population is but 6,500,000, the amounts paid into the class and number lotteries in Austria totaled 53,500,000 schillings), class lotteries and lottery loans with their long time intervals between purchase of the stake and payment of the prizes are superior to the number lottery. For this reason proposals have been made to substitute interest lotteries for the existing lotteries, either in connection with savings banks (as in the Scherl "thrift premium systems," which were the subject of much discussion in Germany between 1890 and 1904) or in the form of a governmental class lottery, in which the undrawn tickets would be repayable without interest after a long period of time. These are the basis of the Molling plan for the reform of the German class lottery, which was unanimously approved by the experts in an inquiry conducted by the Friedrich List-Gesellschaft in 1930. Liberal opposition to governmental lotteries has not been aimed at interest lotteries. With the adoption of such lotteries the exchequers of countries accustomed to revenue from the lottery monopoly would be able to retain a source of revenue which could be replaced only by an unpopular increase in taxation. If private lotteries for civic purposes and advertising lotteries are to be allowed at all, governmental regulation is desirable to protect the public against the concealment of excessively small chances of winning. From the standpoint of enforcement it is important to prevent the evasion of existing lottery prohibitions either through participation in foreign lotteries or through the recurrent appearance of new devices which conceal lottery operations under a variety of designations. Play in foreign lotteries, which adversely affects the balance of payments and the domestic money market, persists despite existing prohibitions. The tickets of the Danish Colonial Lottery, for example, are sold exclusively outside of Denmark. Aside from these considerations of financial and economic policy the social harm resulting from excessive participation by the people in lottery play and the principal justification for the penal measures against it lie in its threat to economic morals—its tendency to accustom the masses to expect improvement in their economic situation through luck rather than through their own labor and ability or through some form of social action.

ERNST SEELIG

See: GAMBLING; SPECULATION; PROBABILITY; REVENUES, PUBLIC; MORALS.

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LOTZ, JOHANN FRIEDRICH EUSEBIUS

(1770–1838), German economist. Lotz, a jurist and high administrative official of the Duchy of

Saxe-Coburg-Gotha, is considered the most capable representative of the Smith-Say school in Germany in the early nineteenth century. In his first major work, *Ueber den Begriff der Polizei und den Umfang der Staatspolizeigewalt* (Hildburghausen 1807), he set himself the task of defining the scope and administrative technique of the *Hilfspolizei* (the term designates the sphere of governmental activity in promoting economic development, as distinguished from *Zwangspolizei*, which denotes the narrower sphere of protection of life and property). Of greater importance is his *Revision der Grundbegriffe der Nationalökonomie, in Beziehung auf Teuerung und Wohlfeilheit angemessene Preise und ihre Bedingungen* (4 vols., Coburg 1811–14), which is distinguished by both its rigorous analysis of fundamental concepts and its subjective approach to the theory of value. It exerted, however, a confusing influence upon subsequent writers by its elaborate differentiation between value in use, value in exchange and price.

Lotz' main importance, however, lies in the theoretical treatment of economic policy, to which he devoted his main work, *Handbuch der Staatswirtschaftslehre* (3 vols., Erlangen 1821–22; 2nd ed., 3 vols., 1837–38). His approach is entirely from the viewpoint of the consumer: the primary object of economic policy is to provide the consumer with low cost goods and it is the task of theory to determine the circumstances which are conducive to the attainment of this objective. One of the most consistent early representatives of economic liberalism—having been converted to classical views because of his disappointment over the failure of the government's grain supply policies—Lotz extolled freedom of competition. But in investigating the prerequisites of free competition he met with the problem of the effect of unequal distribution of wealth upon freedom of enterprise. Although he did not pose the problem with complete clarity, his very awareness of it marks him as one of the most important precursors of German socialism of the chair.

M. PALYI

Consult: Roscher, W. G. F., *Geschichte der National-Oekonomik in Deutschland*, Geschichte der Wissenschaften in Deutschland, Neuere Zeit, vol. xiv (Munich 1874) p. 665–73; Zuckerkandl, R., *Zur Theorie des Preises* (Leipsic 1889) p. 93–108; Diehl, Karl, "Die Entwicklung der Wert- und Preistheorie im 19. Jahrhundert," and Wiese, Leopold von, "Die Lehre von der Produktion und der Produktivität" in *Die Entwicklung der deutschen Volkswirtschaftslehre im neunzehnten Jahrhundert*, 2 vols. (Leipsic 1908) vol. i, chs. ii–iii; Böhm von Bawerk, Eugen, *Kapital und Kapitalzins*, ed. by Friedrich Wieser, 2 vols. (4th ed. Jena 1921), vol. i tr. by William Smart as *Capital and Interest* (London 1890) p. 83–85; Palyi, Melchior, "The Introduction of Adam Smith on the Continent" in *Adam Smith, 1776–1926* (Chicago 1928).

LOTZE, RUDOLF HERMANN (1817–81), German philosopher. The son of a physician, Lotze enrolled at the University of Leipsic as a student of medicine but took most of his courses in philosophy and the natural sciences. Intellectually he was already torn between two interests, the philosophic reconciliation of which was to be his lifelong task. These were his interest in poetry and aesthetics, which was enhanced by the inspiration of C. H. Weisse, who introduced him to the ideas developed by Fichte, Schelling and Hegel; and the interest in the natural sciences, which was prompted by the scientific reaction against idealism and *Naturphilosophie* and which Lotze developed under the guidance of such masters as E. H. Weber, A. W. Volkmann and G. T. Fechner. The whole work of Lotze is an expression of these diverging interests. The scientific interest was reflected in his work on physiology, *Allgemeine Pathologie und Therapie als mechanische Naturwissenschaften* (Leipsic 1842, 2nd ed. 1848), an attempt to expound purely mechanistic principles, and in his *Medicinische Psychologie* (Leipsic 1852), an outline of psychology from a physiological viewpoint. At the same time it was Lotze's belief that side by side with the realm of science there also exists the world of emotional values, of "happiness and unhappiness." Dissatisfied with the general worship of experience and the predominant faith in facts as a basis for the so-called exact sciences, he endeavored to vindicate the cosmic status of emotional values. For it is important not only to determine and "calculate" the course of events but also to appreciate them.

The two tendencies, the scientific and the personalistic, also found expression in Lotze's social theory. In the manner of Herbart he insisted upon a social science which should transcend the limits of individual psychology. But at the same time he also followed Herder in endeavoring to bestow meaning and purpose upon social and historical life.

Since the first stages of Lotze's creative career coincided with the collapse of German metaphysics, he refused to take the road of Hegel. Thus while believing that philosophy was concerned with reality as a whole, he denied that the course of the universe can be interpreted in terms of a single principle. A similar attitude is

manifested in Lotze's conception of history, which was for him not a general progressive advance but "a road from an unknown beginning to an unknown end."

Lotze's conviction that there existed side by side with the world of facts an emotionally revealed realm of values served to place the concept of value in the foreground and thereby to pave the way for the ever increasing significance which this notion acquired in subsequent German philosophy. To be sure, he himself formulated no doctrine of values in the proper sense of the term. But the suggestions contained in his doctrine of *Geltung*, or validity; the sharp distinction he drew between things which exist and truths which are valid, supplied thinkers like Windelband, Rickert and Simmel with a starting point for their speculations.

BERNHARD GROETHUYSEN

Important works: *Mikrokosmos*, 3 vols. (Leipsic 1856–64, 5th ed. 1897–1909), tr. by E. Hamilton and E. E. C. Jones, 2 vols. (4th ed. Edinburgh 1897); *System der Philosophie*, ed. by G. Misch, 2 vols. (Leipsic 1874–79, 2nd ed. 1879–84), vol. i tr. by B. Bosanquet as *Logic*, 2 vols. (2nd ed. Oxford 1888), and vol. ii tr. by B. Bosanquet as *Metaphysics*, 2 vols. (2nd ed. Oxford 1887).

Consult: Falckenberg, R., *Hermann Lotze* (Stuttgart 1901); Jones, Henry, *A Critical Account of the Philosophy of Lotze* (Glasgow 1895); Moore, V. F., *The Ethical Aspects of Lotze's Metaphysics*, Cornell Studies in Philosophy, no. iv (New York 1901); Thomas, E. E., *Lotze's Theory of Reality* (London 1921).

LOUIS XI (1423–83), king of France. When Louis XI was consecrated king in 1461 upon the death of his father, Charles VII, he had already given striking evidence of two outstanding characteristics: extraordinary administrative talent and a passion for intrigue, which had on several occasions led him to organize revolts against his father. A much maligned son, he became from the standpoint of the evolution of the French state the outstanding king of the house of Valois. Dominated by a peasantlike passion for land and gifted with remarkable political realism, he so accelerated the long process of French unification that his reign may be said roughly to mark the end of feudal France. From the duke of Burgundy he repurchased the cities of the Somme in 1463. From 1465 he had to contend with a series of powerful coalitions against him; the first of these was the Ligue du Bien Public, organized under the leadership of Charles the Bold, later duke of Burgundy, and the duke of Brittany, which aimed ostensibly to bring about a reduction of taxes but really to curb the king's authority. Although several times temporarily worsted in the vicissitudinous struggles Louis in 1472 succeeded by clever diplomacy in detaching Brittany from the alliance with Burgundy and England. In the meantime the opportune death of Charles, duke of Guyenne, had enabled him to seize that province. In 1475 he turned an English invasion to profit by bribing the enemy to retreat and to join him in an economic alliance, sealed by the Treaty of Picquigny. Upon the death of Charles the Bold in 1477 he took possession of Burgundy, Artois and Picardy, the last involving him in a bitter war with Maximilian of Austria; in 1481 he retook Maine and Provence from Charles of Anjou.

In his struggle against the nobles Louis followed and developed his ancestral policy of looking to the cities for support and of working with them for mutual benefit. His reign was characterized by a great development of the bourgeoisie, which he favored not only against the nobles but against the lower classes, as well as by the rise of fairs and of commercial markets. Almost his last concern was to create a uniform system of weights and measures and to assure internal commercial freedom. But he also established a supervision over the cities closer than that of any previous king, diminishing local liberties and appointing mayors of his own choice. Although preserving most of the older governmental organs he reenforced his individual authority by creating a new personnel recruited from the bourgeoisie and petty nobility. While he always preferred negotiations to war he expanded the army as a bulwark of kingship and introduced a considerable degree of permanence into royal taxation.

Louis XI was a patron of culture, the liberator of François Villon, the friend of Philippe de Commines; Jean de Ockeghem, the famous musician, and Jean Fouquet, the portraitist and miniaturist, were in his service. He displayed great interest in printing, the French origins of which date from his reign. A tireless worker, a self-reliant and autocratic king, who, however, regarded his power as a means for developing France, Louis XI was justly called by Michelet the sage of the fifteenth century. No French king has been more grossly distorted by legend.

PIERRE CHAMPION

Consult: Champion, Pierre, *Louis XI*, 2 vols. (Paris 1927), tr. by Winifred Stephens Whole (New York 1929); Sée, Henri Eugène, *Louis XI et les villes* (Paris 1891); Rey, R., "Louis XI et les états pontificaux de France au XV^e siècle de'après des documents inédits"

in Académie Delphinale, *Bulletin*, 4th ser., vol. xii (1899) 187–452; Petit-Dutaillis, Charles, "Le règne de Louis XI et le gouvernement des Beaujeu" in *Histoire de France depuis les origines jusqu'à la Révolution*, ed. by E. Lavisse, vol. iv (Paris 1902) pt. ii, p. 321–452.

LOUIS XIV (1638–1715), king of France. He became king in 1643 on the death of his father, Louis XIII, but governed independently only after the death of Mazarin in 1661. During the fifty-four years of his personal reign all Europe regarded him as the archetype of a king. Louis XIV succeeded more completely than any of his predecessors in making a reality of monarchy by divine right. He never admitted that he, who possessed the sacredness of divine ordination, could be subject to any legitimate limitation in the exercise of his authority. He was the master of all his subjects, of their possessions, even of their consciences. His revocation of the Edict of Nantes in 1685 was in his opinion the mere fulfilment of his duty to God to redress their errors. Louis XIV, the absolutist, was also the first French king who was an administrator. He cooperated industriously with his great minister, Colbert, in the latter's schemes to promote the unity and grandeur of the nation and so to enhance the majesty of the king. The first French system of centralized administration, the system which was to survive until the Revolution of 1789, dates from his reign. Progressively obliterating the local powers and supplanting them by the intendants, whom he sent as his agents to the provinces, he instituted a regime which in view of its control by a power believing itself responsible only to God was inevitably arbitrary. Thus Louis XIV deprived the monarchy of its old bulwarks in the nation. He aggravated the misery of the people, especially in the rural districts, and alienated the bourgeoisie, who as the incumbents of most of the local offices found themselves dispossessed by the intendants. The nobility he grouped about him at his court, but by that very act he incurred the responsibility of providing for its support and linked the fortunes of the monarchy to those of the privileged classes. The origin of the grievances producing the revolution is to be sought in the reign of Louis XIV. Louis' foreign policy was overly inspired by his love of glory and war, which on the occasion of the War of the League of Augsburg (1689–97) incited almost the whole of Europe against him. His urge toward aggrandizement, however, although it eventuated in internal exhaustion in the last years of his reign led to the extension of the national boundaries and to the addition of a number of provinces which soon became wholly French: Alsace, Artois, Flanders and Franche-Comté. Louis' place is especially great in the history of French civilization. The classic French authors and artists found in him understanding and encouragement, and at the same time by surrounding himself with them he attained to an Augustan splendor. The Versailles which he created still arouses the admiration of all who contemplate it. It was with good reason that Voltaire called the seventeenth century the century of Louis XIV.

G. PAGÈS

Consult: Pagès, G., *La monarchie de l'ancien régime* (Paris 1928), and "Ludwig XIV" in *Menschen die Geschichte machten*, ed. by P. R. Rohden and G. Ostrogorsky, 3 vols. (Vienna 1931) vol. ii, p. 338–44; Lacour-Gayet, G., *L'éducation politique de Louis XIV* (2nd rev. ed. Paris 1923); Lavisse, Ernest, "Louis XIV" in his ed. of *Histoire de France depuis les origines jusqu'à la Révolution*, vol. vii (Paris 1906–07) pts. i–ii; Rambaud, A. N., *Histoire de la civilisation française*, 2 vols. (11th ed. Paris 1909–17) vol. ii; Mentz, Georg, *Ludwig XIV, sein Reich und seine Zeit* (Bonn 1922); Heinacker, Willy, *Die Persönlichkeit Ludwigs XIV*, Historische Studien, vol. cxxv (Berlin 1915).

LOVETT, WILLIAM (1800–77), English publicist and reformer. Lovett was born in Cornwall and in 1821 he migrated to London. It was a time when doctrines and methods of social reform were being hammered out and he was soon at the hub of working class radicalism. In 1836 he organized the London Working Men's Association and shortly thereafter he became one of the leaders in the Chartist movement. He spent a year in jail (1839–40) as a result of his protests against police interference in a Birmingham Chartist meeting, but his decided opposition to Feargus O'Connor and the "physical force" element eventually estranged him from the conduct if not the ideals of the movement.

The increasing weakness of the Chartist cause confirmed Lovett in his views on the vital necessity of education and its power to emancipate the working classes, mentally, socially and politically. He taught working men's classes, wrote textbooks and in his desire for an enlightened public opinion contended strongly against all attempts to curtail the right of citizens to express their opinions. Like the other Chartists he desired universal suffrage; but he wished to see it extended also to women, a provision which was excluded from the charter because of a fear that it would "retard the measure." For the reform of Parliament in addition to the measures set forth in the charter Lovett advocated a compulsory

examination of all candidates, the delegation by Parliament of a limited and carefully defined number of matters to "district legislatures" and the restriction of the power of the House of Lords to obstruct legislation. Communism, Owenite socialism, except for a brief period in his youth, and nationalization of the land did not commend themselves to him; but he held that great benefits might be realized by judicious cooperation between capital and labor in the production of wealth. He proposed to check accumulations of wealth by abolishing primogeniture and entail and imposing heavy taxation upon inherited wealth and unearned increments. He also advocated the abolition of all indirect taxes.

Throughout his life Lovett was an internationalist. He held that the interests of the toiling masses of all countries are identical and he embodied his views in several voluminous addresses to the working men of other lands. War he regarded as "a pernicious waste of the fruits of ... industry" and an "instrument for perpetuating national feuds and political slavery." As a first move toward its final abolition he proposed a "congress of nations" and a "standing court of adjudication," the former to devise a code of international law and to declare the outlawry of the instigators of wars, the latter to effect rational settlements of disputes between nations.

ALFRED PLUMMER

Important works: *Life and Struggles* (London 1876; new ed. with introduction by R. H. Tawney, Bohn's Popular Library, 2 vols., 1920); *Chartism*, in collaboration with J. Collins (London 1840, 2nd ed. 1841); *Social and Political Morality* (London 1853).

Consult: Hammond, Barbara, *William Lovett, 1800–1877*, Fabian Tract no. 199 (London 1922); Hovell, Mark, *The Chartist Movement*, ed. by T. F. Tout, University of Manchester, Publications, Historical series, no. xxxi (London 1918).

LOWELL, JAMES RUSSELL (1819–91), American author, editor and diplomat. Lowell came of a distinguished Massachusetts family; after his graduation from Harvard he was admitted to the bar but turned at once to literature. In 1848 he achieved wide fame with *The Biglow Papers*, semihumorous dialect poems caustically attacking the Mexican War and the annexation of Texas. As professor of modern languages at Harvard (1856–76) and as editor of the newly founded *Atlantic Monthly* (1857–61) he established his position as the outstanding American literary critic and scholar of the period. During the Civil War his second series of *Biglow Papers* and various patriotic poems exerted a heartening influence upon the North. From 1864 to 1872 Lowell served with Charles Eliot Norton as coeditor of the *North American Review* and helped to supply the first intelligently sympathetic interpretations of Lincoln's reconstruction policy and of his statesmanship in general. Lowell's powers as a polished writer and speaker were obvious qualifications for a diplomatic career, and under Presidents Hayes and Arthur he served as minister first to Spain and then to Great Britain, where he was influential in strengthening Anglo-American intellectual ties.

Less self-reliant than Emerson or Thoreau, Lowell reflects in his opinions the principal intellectual fluctuations of a confused period of transition. In his youth an ardent supporter of William Lloyd Garrison's attacks on the old party system, the laws and the constitution, he found a more reputable haven for his idealism in the newly formed Republican party, which he continued to serve as a loyal and at times partisan spokesman both during its period of aggressive libertarianism and during its later period of intrenchment. But with the unmistakable evidences of deterioration in Republican leadership and policy after Lincoln's death Lowell shifted uneasily to the left, aligning himself with the moderate reformers—the American Manchesterians, Godkin, Schurz and Curtis—and supporting their assaults on the evils of the tariff and administrative corruption. While he made few speeches on issues of the day and indulged in few polemics, his fierce denunciation of political corruption added prestige and philosophical weight to the cause of moderate reform. His acquaintance with the United States hardly extended beyond the Alleghenies and his sympathies never succeeded in outgrowing a certain intellectual and social narrowness. He knew little of western agrarianism and what he knew of it he distrusted as radical. Disliking novelty he shrank from such movements as that for woman's rights and protested against the extension of suffrage in England. His unshaken reverence for the past kept intact his belief that the republic would endure only while the ideas of its founders remained dominant.

ALLAN NEVINS

Important works: *The Writings of James Russell Lowell*, 11 vols. (Boston 1896–1900); *Anti-slavery Papers*, ed. by W. B. Parker, 2 vols. (Boston 1902); *Letters*, ed. by C. E. Norton, 2 vols. (New York 1894).

Consult: Parrington, Vernon Louis, *Main Currents in American Thought*, 3 vols. (New York 1927–30) vol. ii, p. 460–72; Grattan, C. Hartley, "Lowell" in

American Mercury, vol. ii (1924) 63–69; Mims, Edwin, "Lowell as a Citizen" in *South Atlantic Quarterly*, vol. i (1902) 27–40; Shea, Leo Martin, *Lowell's Religious Outlook* (Washington 1906).

LOWELL, JOSEPHINE SHAW (Mrs. Charles Russell Lowell) (1843–1905), American social reformer. Josephine Lowell was one of the notable group of men and women who during the last quarter of the nineteenth century gave shape and impetus to the formation of social welfare agencies and institutions in the United States. She began her career with relief activities during and after the Civil War. In the early 1870's she became active in the State Charities Aid Association of New York and in 1876 was appointed the first woman commissioner of the New York State Board of Charities. A real commitment to the responsibilities of her office led her to investigate conditions in public institutions for the dependent and defective, a study which gave rise to most of her later projects. Among these may be counted her founding of the Charity Organization Society of New York, one of the earliest and probably the most influential of its kind in the country, and her campaign for state reformatories for women, for custodial care of feebleminded women, for the establishment of a municipal lodging house in New York City, for the introduction of police matrons and for important reforms in the care of dependent children and the insane. Like Letchworth and Dugdale she based her reforms on sound data obtained by scholarly work in field and office. Although her actual work was confined to the city and state of New York, an imagination susceptible to new ideas and sensitive to social evils, a facile pen and great personal force made her influence practically national in scope. She wrote more than a hundred papers, articles, pamphlets and reports. Outside the field of social work her activities included civil service reform, an interest in the relations of capital and labor that resulted in the founding of the Consumers' League of New York, of which she was the first president, and active participation in the Philippine Progress Association, an organization opposed to American domination of the Philippines.

PHILIP KLEIN

Consult: The Philanthropic Work of Josephine Shaw Lowell, ed. by W. R. Stewart (New York 1911); De Forest, Robert W., and others, *In Memoriam: Josephine Shaw Lowell*, New York City Charity Organization publication (New York 1906).

LOYD, SAMUEL JONES. *See* OVERSTONE, LORD.

LOYOLA, IGNATIUS DE (1491–1556), Spanish religious leader. Loyola, a Spanish nobleman, had been a military officer for ten years when protracted illness resulting from a wound received in 1521 brought to him, as to so many other Catholic saints, conversion and renunciation of the world. The first phase of his new life was marked by asceticism and in 1523 by a pilgrimage to Palestine which served merely as personal penance. It was only during his subsequent sojourn at Spanish universities and particularly at the University of Paris from 1528 to 1535 that he began to exert influence upon others through private preaching. In 1534 he organized a small group of his friends at Paris into a new order for missionary work among the unbelievers of Palestine; this embryonic order, while already imbued with the strong militaristic spirit which the mature Society of Jesus owed partly to Loyola's early life as a Spanish noble, as yet manifested none of the essential elements of the characteristic Jesuit point of view. When his missionary purpose was frustrated as a result of the outbreak of war between Venice and Turkey, Loyola went to Rome in 1537. There in the atmosphere of crisis created in the church by the Protestant Reformation he reformulated his plans and dedicated his order to the education of youth, preaching and the unconditional performance of whatever task was imposed by the papacy. The metamorphosis undergone by the society between 1534 and 1540, when the Curia confirmed it on the basis of the plan of 1537, attached particularly to its relations with the church. As a result of his experiences in Rome Loyola's impulse to care for souls became fused with his passionate desire to defend the church. Hence unwavering obedience to the Curia and absolute belief in the dogmas of the church to the exclusion of all private judgments became cardinal points in his system; not only were they prescribed for Jesuits but the order consecrated itself to the task of imposing them on the entire world. By this identification of the doctrines of the church with the will of God, Loyola represents the final stage in the evolution of Catholicism into a religion of authority. Luther had upheld the individual conscience; Loyola reacted by condemning it to annihilation. Thus since this period there have existed two fundamentally opposed ideals in Christian religious life. In the course of its later development the order was modified in important ways: it came to equate its own authority with that of church; and its general tone was greatly influenced by

the exigencies of warfare against Protestantism, in the struggle against which it had become an important power by the time of Loyola's death. His own views, however, remained unchanged after 1537. Henceforth he led a zealously active life at Rome, founding the Collegium Germanicum, persuading Paul III to establish the Roman Inquisition and creating asylums for children and unfortunate women. He became the first general of the order in 1541 and for the rest of his life carried on constant correspondence with his colleagues, assisting them with sagacious counsel and adjusting their disputes. In 1550 he prepared the society's definitive constitution, which he revised in 1552 and which the chapter general confirmed in 1558.

WALTER GOETZ

Works: Loyola's letters and instructions can be found in *Monumenta ignatiana*, 1st ser., 12 vols. (Madrid 1903–14), his spiritual exercises in 2nd ser. (Madrid 1919), and his miscellaneous writings in 4th ser., 2 vols. (Madrid 1904–18).

Consult: Gothein, Eberhard, *Ignatius von Loyola und die Gegenreformation* (Halle 1895); Funk, Philipp, *Ignatius von Loyola*, Die Klassiker der Religion, vol. vi (Berlin 1913); Rose, S., *St. Ignatius Loyola and the Early Jesuits* (London 1891); Sedgwick, H. D., *Ignatius Loyola: an Attempt at an Impartial Biography* (New York 1923); Joly, Henri, *St. Ignace de Loyola* (3rd ed. Paris 1899), tr. by Mildred Partridge (London 1899); Desdevises du Dezert, G., in *Revue hispanique*, vol. xxxiv (1915) 1–72; Zarneke, L., "Die Exercitia spiritualia des Ignatius von Loyola in ihren geistesgeschichtlichen Zusammenhängen" in Verein für Reformationsgeschichte, *Schriften*, vol. xlix, pt. i (1931); Hughes, T. A., *Loyola and the Educational System of the Jesuits* (London 1906); Pastor, Ludwig von, *Geschichte der Päpste seit dem Ausgang des Mittelalters*, vols. i–xiv (7th–12th eds. Freiburg i. Br. 1925), English translation ed. by F. I. Antrobus and R. F. Kerr, vols. i–xx (1st–5th eds. London 1922–30) vol. xii, chs. i–ii, vol. xiii, ch. vii.

LOYSEAU, CHARLES (1564–1627), French jurist. Loyseau was bailiff at Châteaudun, then advocate at the Parlement of Paris. His works, which are highly valued, are devoted to public and private law. His *Cinq livres du droit des offices* (Châteaudun 1610) is devoted to the study of the royal administration. At the time when Loyseau was writing the Edict of La Paulette had just sanctioned the sale and heredity of legal offices, and this practise was tending to spread into the army and the other branches of the administration. Loyseau protests sharply against this method of recruiting, which weakens the power of the state and gives few guaranties to its citizens. Despite the success of this book the sale of offices continued until 1789. In his *Traité des seigneuries* (Paris 1608), to which must be added the *Discours de l'abus des justices de village* (Paris 1603), Loyseau examines the vestiges left in seventeenth century France by political feudalism and in this connection describes the origins of the feudal system. He shows himself very hostile to the manorial justices, the evils of whose offices he had ascertained in his own functions as magistrate. Without daring to propose their complete suppression he endeavored to limit feudality to privileges purely honorific and pecuniary, depriving it of all influence in the exercise of the public power. His *Traité des ordres* (Châteaudun 1610) describes the social hierarchy of his time divided into clergy, nobility and the third estate, and its effects from the point of view of private law. In his *Traité du déguerpissement* (Paris 1597) Loyseau following the example of Dumoulin attempts to achieve the synthesis of Roman law with the various *coutumes* of the north of France. This work based on extensive historical and practical knowledge shows the progress of ideas in the seventeenth century in the direction of a codification of French law.

GEORGES BOYER

Works: *Oeuvres complètes* (Paris 1640; 4th ed. Lyons 1701).

Consult: Lelong, Jean, *La vie et les oeuvres de Loyseau* (Paris 1909); Sée, Henri, *Les idées politiques en France au XVII^e siècle* (Paris 1923) bk. i, ch. i, pt. ii.

LUBBOCK, SIR JOHN, FIRST BARON AVEBURY (1834–1913), English politician, anthropologist and naturalist. Lubbock, a banker by profession, served in Parliament from 1870 to 1900, when he was raised to the peerage. He was a consistent opponent of socialism, of social legislation and of home rule, an ardent defender of the imperial policy of Great Britain, especially during the Boer War, and an advocate of free trade and parliamentary reform. His name is associated with an act for the establishment of bank holidays passed in 1871. He was influential in financial and educational circles and in municipal politics, serving as president and director of many organizations.

Lubbock's diversified scientific interests were stimulated largely by his friend Charles Darwin, in defense of whose evolutionary doctrine he was along with Huxley most outspoken. After archaeological research and studies of collections of prehistoric artifacts in the museums throughout Europe he prepared a series of monographs, later recast and published as *Pre-historic Times*

(London 1865, 7th ed. 1913), in which he revised the classifications of the Danish archaeologists by dividing the stone age into two periods, the palaeolithic and the neolithic. He later refused, however, to accept the further subdivision of the palaeolithic period suggested by Gabriel de Mortillet. He adopted an extreme evolutionary position in his approach to the study of surviving savages in his *The Origin of Civilization* (London 1870, 7th ed. 1912); this attitude made him partial to ethnological documents emphasizing the simplicity and cultural inferiority of primitive peoples and caused him to disregard more authentic contrary evidence then available. He argued with Bachofen, Morgan, Howitt, Spencer and Gillen that prior to marriage there existed an original state of sexual promiscuity, which he designated as communal marriage, but he vigorously dissented from their theory that exogamy arose as a result of conscious human effort to improve morals and to avert the dangers of inbreeding. Under the influence of McLennan he ascribed exogamy to marriage by capture, contending that capture alone could explain the origin of individual marriage by giving man a right to monopolize a woman to the exclusion of his fellow clansmen. The origin of totemism he attributed to the practise of naming individuals and later their families after animals. His evolutionism led him, in controversy with Tylor and Lang, to deny the existence of religion in primitive society.

Lubbock was a pioneer in the experimental study of animal behavior; he also made original researches in the field of botany and wrote two popular books on geology. The circulation of his sententious lay sermons on ethical questions totaled over half a million copies.

BERNHARD J. STERN

Other important works: *Ants, Bees and Wasps* (London 1882; new ed. by J. G. Meyers, New York 1929); *On the Senses, Instincts and Intelligence of Animals* (London 1888); *Essays and Addresses, 1900–1903* (London 1903).

Consult: Hutchinson, H. G., *Life of Sir John Lubbock, Lord Avebury*, 2 vols. (London 1914); *The Life-work of Lord Avebury*, ed. by U. Lubbock Grant Duff (London 1924); Lang, Andrew, "Lord Avebury on Marriage, Totemism, and Religion" in *Folk-lore*, vol. xxii (1911) 402–25; Stern, Bernhard J., *Lewis Henry Morgan: Social Evolutionist* (Chicago 1931).

LUBECKI, FRANCIS XAVIER, PRINCE DRUCKI (1778–1846), Polish statesman. Appointed by Alexander I in 1816 to represent the Kingdom of Poland on the liquidation commission which was to apportion the debts and assets of the principality of Warsaw between the Kingdom of Poland, Austria and Prussia, Lubecki secured considerable advantages for his country's treasury. In 1821 he was appointed minister of finances in the Kingdom of Poland. He reorganized public finances, reduced expenditures and improved the organization for the collection of taxes, especially indirect taxes, on which he placed particular emphasis. These measures resulted in a surplus in the first year and in almost all subsequent years of his administration. The foremost personality among the ministers of the Kingdom of Poland, he played a decisive role in the whole economic policy of the state and contributed greatly to Polish industrial development. His economic policy favored industry rather than agriculture. When in 1822 Russia adopted a protective tariff, a similar tariff was adopted by the Kingdom of Poland under Lubecki's influence, which made it possible to secure for twenty years a Polish-Russian tariff on terms very favorable to Polish industry. The resulting customs war with Prussia was settled in 1825 by a considerable reduction of the import duties on Polish grain as compared with those established by the hostile Prussian tariff of 1823. In order to increase the productiveness of the large agricultural estates, which especially at the time of the customs war were suffering from low prices and the burden of old debts, Lubecki established in 1825 a credit association which furnished the estate owners with long term credit at low rates. In 1828 on his initiative the Polish Bank was founded as a state institution to administer the public debt and to offer credit, especially on short terms, to industry and commerce. This whole activity, which contributed greatly to public welfare, was interrupted by the Polish-Russian war.

JAN RUTKOWSKI

Consult: Smolka, Stanisław, *Polityka Lubeckiego przed powstaniem listopadowem* (Lubecki's policies prior to the November insurrection), 2 vols. (Cracow 1907); Radziszewski, Henryk, *Skarb i organizacja władz skarbowych w Krolestwie Polskiem* (The Treasury and the fiscal organization of the Kingdom of Poland), 2 vols. (Warsaw 1907–08) vol. i, and *Bank polski* (The Bank of Poland) (2nd ed. Posen 1919); Jasiukiewicz, Stanisław, *Der landwirtschaftliche Kreditverein im Königreiche Polen, 1825–1910* (Munich 1911); Gasiorowska, Natalja, *Górnictwo i hutnictwo w Królestwie Polskiem, 1815–1830* (Mining in the Kingdom of Poland) (Warsaw, n.d.).

LUBIN, DAVID (1849–1919), agrarian reformer. During his childhood Lubin's family emigrated from Poland to the United States,

where at the age of twelve he became a full time wage earner. In 1874 he established himself as a merchant in Sacramento. This business venture grew into one of the largest department stores and mail order houses on the Pacific coast, and its prosperity enabled him to devote the last twenty-five years of his life to public welfare projects.

In the early 1880's Lubin became interested in fruit and wheat growing in California and his practical experience led him to devote himself to the problems of the farmers in his region. He fought successfully against the unregulated monopoly control of freight rates. Later he became convinced that agriculture was unduly burdened by the tariff and attempted to secure support for a bounty on agricultural exports. But the regulation of transportation rates and the attempt to make the tariff effective for agriculture were not sufficient. He centered his attention on world price making forces. His observations of the results of the activities of speculators on farm prices led him to the conclusion that there should be an international clearing house of information on agricultural crops, available to farmers of all nations. His own government offered no encouragement to his proposal and it was also rejected in England and France. But Lubin, who had a tenacity of purpose and a zeal for service which approached religious fervor, succeeded in converting the king of Italy to his cause. The International Institute of Agriculture (*q.v.*) was created at Rome in 1905, one of the first of the international organizations to promote economic cooperation, the benefits of which have been so much emphasized since the World War. Lubin was the official representative of the United States at the institute until his death.

ASHER HOBSON

Consult: Agresti, O. R., *David Lubin* (Boston 1922); Hobson, Asher, *The International Institute of Agriculture*, University of California, Publications in International Relations, vol. ii (Berkeley 1931).

LUCAS, SIR CHARLES PRESTWOOD (1853–1931), British administrator and historian. Lucas studied at Winchester and Oxford and became a clerk in the Colonial Office. Having acquired a vast knowledge of imperial affairs he planned a *Historical Geography of the British Colonies*, of which he himself wrote the introduction and six volumes. The object of this work, a pioneer work in the field, was "to try to give a connected and accurate account of British colonisation, its methods, agencies and results, and of the various provinces of the British Empire." Several of Lucas' lesser writings did much to stimulate interest in colonial problems, and his scholarly work augmented and encouraged imperial sentiment in the 1890's. He held that decentralization was a means of preserving the empire and stressed the peculiar idea that the American Revolution was a blessing to the mother country since it taught a new approach to colonial problems. At the same time he looked upon the opponents of the American case in the prerevolutionary period as imperial heroes.

Lucas became assistant undersecretary of state in 1897, while Joseph Chamberlain was colonial secretary, and supported Chamberlain's imperial schemes with enthusiasm. From 1907 until his retirement in 1911 he was head of the dominions division of the Colonial Office.

For fifty years Lucas was the moving spirit of the Working Men's College in Great Ormond Street, London. He served as chairman of the Royal Colonial Institute and on its behalf edited *The Empire at War* (5 vols., London 1921–26), a history of "imperial cooperation in war time."

I. L. EVANS

Important works: Historical Geography of the British Colonies, 11 vols. (Oxford 1887–1911; new ed., vols. i–vii$^{1-2}$ 1905–31); *The Canadian War of 1812* (Oxford 1906); *A History of Canada, 1763–1812* (Oxford 1909); *Greater Rome and Greater Britain* (Oxford 1912).

LUCHAIRE, ACHILLE (1846–1908), French historian. Luchaire was for many years professor at the Sorbonne, where he succeeded Fustel de Coulanges. His specialty was the history of French institutions and society in the period of the direct Capetians; that is, from the end of the tenth century to the beginning of the fourteenth. His first works in this field aimed to show the degree to which the Capetian dynasty had been a continuation of the Carolingian line, the extent to which it had undergone the influence of the feudal environment and finally to what degree it had gradually restored the monarchical principle in France at a time when a Romanistic concept of the state was tending to be revived in most of the countries of Europe, notably in the empire and in England. His *Histoire des institutions monarchiques de la France sous les premiers Capétiens, 987–1180* (2 vols., Paris 1883; new ed. 1891) was epoch making; he later completed it in his *Études sur les actes de Louis VII* (Paris 1885) and especially his *Louis VI le Gros* (Paris 1890).

Then enlarging the frame he published successively two books on the urban institutions of the same epoch, *Les communes françaises à l'époque des Capétiens directs* (Paris 1890; new ed. 1911) and a *Manuel des institutions françaises: période des Capétiens directs* (Paris 1892), which has remained a classic and which treats of all civil as well as of all ecclesiastical institutions. He then devoted himself to the history of the society itself, especially in the two studies which he contributed to Lavisse's *Histoire de France* on "Les premiers Capétiens" (vol. ii, pt. ii) and "Louis VII, Philippe-Auguste, Louis VIII" (vol. iii, pt. i) and in a series of lectures on Philip Augustus out of which issued his book on *La société française au temps de Philippe-Auguste* (Paris 1909; tr. by E. B. Krehbiel, New York 1912). His studies on Philip Augustus led him to study at first hand the correspondence of Innocent III and to publish his *Innocent III* (6 vols., Paris 1904–08), which explained the role of the papacy at the end of the twelfth century and the beginning of the thirteenth.

LOUIS HALPHEN

Consult: Halphen, L., in *Revue historique*, vol. c (1909) 110–13; Imbart de la Tour, Pierre, "Notice sur la vie et les oeuvres de M. Achille Luchaire" in Institut de France, Académie des Sciences Morales et Politiques, *Séances et travaux . . . Compte rendu*, vol. clxxii (1909) 529–62.

LUCHITSKY, IVAN VASILEVICH (1845–1918), Russian historian. Luchitsky was born in the Ukraine and studied at the University of Kiev, where he was appointed docent in 1874 and professor in 1877.

From the beginning of his scientific career he was interested in the history of France, especially of French institutions. During his first sojourn in France (1873–75) he studied the religious wars, working in the archives of Paris, Nîmes, Toulouse, Lyons, Grenoble and Montauban, where he discovered new facts concerning the social and political organization of the Protestants. Thenceforth he devoted himself entirely to economic and social history, especially to the history of property. At first he studied from archive documents the system of communal property in the Ukraine. More important, however, was his work on the history of property in France in the eighteenth century. He devoted almost all his vacations to intensive work in French archives, particularly of the departments. He initiated a fruitful method, the essential feature of which was the use of statistics, which alone could furnish a complete description of the redistribution of property. He depicted on a vast scale the tax rolls and especially the rolls and declarations pertaining to the *vingtièmes*. Thus he was able to determine with approximate correctness the proportion of land in the possession of the various social classes for most of the regions of France in the eighteenth century. He utilized also the documents relating to the sale of national property during the revolutionary period.

Although Luchitsky was never able to synthesize, as he dreamed of doing, all his material into one great work, his published studies contained his essential conclusions, which are of primary interest for the economic and social history of France. He was able to establish for the eighteenth century that the rural property of the clergy, except in the north of France, amounted to only a small proportion of the territory; that the property held by the nobility was more extensive, varying from 15 to 20 percent; that the peasantry held a truly important portion of the land, more or less considerable according to the region but often exceeding 50 percent in the southern and central sections of France; and that the property of the bourgeoisie was far from insignificant. Thus Luchitsky proved irrefutably that peasant holdings in France do not date from the revolution, which merely emancipated their land permanently by abolishing the laws and seigniorial burdens that encumbered it and which also by the sale of national property increased its size appreciably. In the last analysis these studies show that the redistribution of property among the various social classes placed France in an altogether original situation; which distinguished it from the other countries of Europe and the consequences of which are still perceptible today.

A man of broad vision, Luchitsky did not confine himself to his special researches. He was profoundly interested in public affairs: he was a member of the municipal council of Kiev and of the zemstvo of Poltava and in 1908 was elected to the third national Duma, where he was a very active member of the Constitutional Democratic (Cadet) party.

HENRI SÉE

Important works: *Krest'yanskoe zemlevladenie vo Frantsii na kanune revolutsii, preimushchestvenno v Limuzene* (Kiev 1900), tr. into French as *La propriété paysanne en France à la veille de la Révolution, principalement en Limousin* (Paris 1912); *Sostoyanie zemlevladenchiskikh klassov vo Frantsii na kanune revolutsii i agrarnaya reforma 1789–93 gg.* (Kiev 1912), part i tr. into French as *L'état des classes agricoles en France à*

la veille de la Révolution (Paris 1911); "Otchuzhdenie natsional'nikh imushchestv vo Frantsii v kontse xviii vekov" in *Russkoe bogatstvo* (1912), no. ii, p. 102–24, no. iv, p. 50–78, tr. into French as *Quelques remarques sur la vente des biens nationaux* (Paris 1913).

Consult: Kareyev, N., in Rossiiskaya Akademiya Nauk, *Izvestiya*, ser. vi, vol. xii (1918) 2029–38; Sagnac, Philippe, "La propriété foncière et les paysans en France au XVIII^e siècle d'après les travaux de M. J. Loutchitsky," and Sée, Henri, "La propriété rurale en France au XVIII^e siècle d'après les travaux de M. Loutchitsky" in *Revue d'histoire moderne et contemporaine*, vol. iii (1901–02) 156–71, and vol. xviii (1913) 257–67; Sée, Henri, *Esquisse d'une histoire du régime agraire en Europe aux XVIII^e et XIX^e siècles* (Paris 1921).

LUCIAN (*c.* 120–*c.* 200), Greek satirist. Lucian was born at Samosata in Syria but at an early age he went to Greece and became thoroughly imbued with Atticism, acquiring his fame during the reigns of Antoninus Pius, Marcus Aurelius and Commodus. He had a quick and brilliant intellect and he achieved great success by giving public readings, which were then the fashion in all parts of the Greco-Roman world and which were often little more than *jeux d'esprit*. At about the age of forty he turned from these to the satiric dialogue with a view to becoming a moralist and pamphleteer. He found his models in the work (now lost) of the cynic Menippus of Gadara and still more in the Attic comedy of Aristophanes and Eupolis. From that time his spirit of mockery, his sparkling animation and wit took a wider range. His dialogues, true comedies in miniature, transport the reader into a world of fantasy into which Lucian frequently introduces, under the guise of fiction, men and things of his age. At times, as in the *Dialogues of the Dead* and similar compositions, he attacks the vices and passions which he encounters—greed, the insolent ostentation of the rich, ambition, decadent morals; again, as in the *Philosophies for Sale*, the *Runaways* and the *Fisherman*, he derides the vain disputes of philosophical sects, mocks their rivalries and their systems and brands the hypocrisy of the pretended teachers of morals. But it is especially his attacks against religions which continue to excite interest. In pamphlets such as the *Dialogues of the Gods*, *Zeus Catechized*, *Zeus the Tragedian*, to mention but a few of the best, he ridicules the puerility of the myths which had delighted Greece for so long. Elsewhere, as in the *Alexander the Oracle-monger* and the *Peregrinos*, he assails the false prophets or enthusiasts who impose upon the credulous or unstable. His natural frivolity, it is true, permitted him to study nothing profoundly. Concerning Christianity, which was then spreading throughout the Roman Empire, he had only the most superficial view. The most enduring value of his work apart from its purely literary merits is that it pictures at first hand the decadence of the Greco-Roman polytheism and the entire spectacle of the society of that time.

MAURICE CROISET

Works: *Lucianus*, ed. by Julius Sommerbrodt, 3 vols. (Berlin 1886–99); *The Works of Lucian of Samosata*, tr. by H. W. and F. G. Fowler, 4 vols. (Oxford 1905); *Lucian*, original Greek and translation by A. M. Harmon, Loeb Classical Library, vols. i–iv (London 1913–25).

Consult: Croiset, Maurice, *Essai sur la vie et les oeuvres de Lucien* (Paris 1882); Bernays, Jacob, *Lucian und die Kyniker* (Berlin 1879); Helm, Rudolf, *Lucian und Menipp* (Leipsic 1906); Allinson, F. G., *Lucian, Satirist and Artist*, Our Debt to Greece and Rome, no. viii (Boston 1926); Chapman, John Jay, *Lucian, Plato and Greek Morals* (Boston 1931).

LUCKENBILL, DANIEL DAVID (1881–1927), American Assyriologist. Luckenbill studied at the University of Pennsylvania and the University of Berlin and received his PH.D. degree at the University of Chicago in 1907. From that time until his death he taught Assyrian at the University of Chicago, reaching the rank of professor in 1923. During this period he probably influenced more students of Assyrian than any other teacher in the country. His premature death prevented the publication of much important material and his only published books are *The Annals of Sennacherib* (Chicago 1924), a model for all future publications of historical annals, and *Historical Records of Assyria* (2 vols., Chicago 1926–27), a translation with elaborate commentary of the entire source material for Assyrian history, forming the first two parts of a projected series of "Ancient Records of Assyria and Babylonia." Many of his most important contributions dealing with problems of Babylonian, Assyrian and Hittite history as well as with the influence on the Bible of the Babylonian culture and especially religion are to be found only in periodical articles, particularly in the *American Journal of Semitic Languages and Literatures*. Although Luckenbill possessed a mastery of cuneiform texts and grammar and was widely interested in every problem, his chief desire was to understand the social and particularly the economic life of the ancients. His favorite course dealt with Assyrian and Babylonian economic history; he published and annotated numbers of economic documents and

valuable notes are scattered through his articles. Equally worthy of attention is his collection of Hittite treaties in the *American Journal of Semitic Languages and Literatures* (vol. xxxvii, 1921, p. 161–211). Because of his interest in economic documents which have rarely been translated or even studied by the average Assyriologist he conceived the project of an Assyrian dictionary, where each occurrence of each word in the language should appear on a separate card with full context. The work was begun by the Oriental Institute under his direction and has been continued since his death along the lines he planned. Through the material thus collected it is possible to interpret exactly the technical terminology of economic, administrative and social life. Progress is already far advanced in working out price levels, interest rates, administrative changes and the like for the three thousand years of economic and social life covered by the documents.

A. T. OLMSTEAD

Consult: Waterman, Leroy, and Maynard, John A., in *American Journal of Semitic Languages and Literatures*, vol. xliv (1927–28) 1–5, and vol. xlv (1928–29) 90–93.

LUCRETIUS CARUS, TITUS (96?–55 B.C.), Roman poet and the greatest of the Roman Epicureans. Animated by a genuine feeling for nature (*Venus alma genetrix*) and by an enthusiasm for Epicurus as the liberator of minds obsessed with religious superstitions, fear of divine ire and horrible fantasies of the world beyond, Lucretius was the true poet of Epicureanism and in *De rerum natura* gave the doctrine of the Greek master a stupendous artistic quality.

In the first and second books the poem traces the naturalistic conception of the universe according to atomism, applying, in the third, this conception to the relations between the soul and body; in the fourth to the refutation of the belief in a world beyond and immortality; in the fifth to cosmogony and the genesis of life, human society, language and civilization; and in the sixth to the explanation of the natural fearful phenomena, such as tempests, earthquakes and volcanoes. An exposition of Epicurean ethics, which the Roman Epicureans developed with great detail in connection with their theory of friendship, is lacking.

Of great importance for the history of sociological theory is the genetic theory of society and of human progress which Lucretius develops in the fifth book. The theory, which is similar to that expounded (also on an Epicurean base) in the works of Diodorus Siculus and Diogenes of Oenoanda, holds that men were naturally stimulated through the experience of danger and misfortune to advance from their primordial savage life. It is also from natural experience that they received the suggestions for their first discoveries, such as fire, the smelting of metals, the arts and agriculture. These experiences awakened reflection; innate insatiability impelled humanity to progressive development. Need, experience, the sense of utility, the impulsion of the mind, time, all operating gradually and continuously, are the artisans of all progress, creating and developing society and justice, the family and affections, language and civilization. Echoes of these theories are found in the pages of Vergil, Horace and Vitruvius; these writers kindled the enthusiasm of the men of the Renaissance, who passed on the influence of Lucretius into modern times.

RODOLFO MONDOLFO

Works: *De rerum natura*, ed. with an English translation by H. A. J. Munro, 3 vols. (4th rev. ed., London 1920–28).

Consult: Alfieri, V. E., *Lucrezio* (Florence 1929); Masson, John, *Lucretius, Epicurean and Poet*, 2 vols. (New York 1907–09); Martha, C., *Le poème de Lucrèce* (8th ed. Paris 1913); Bruns, I., *Lucrez Studien* (Freiburg i. Br. 1884); Giussani, C., *Studi lucreziani* (Turin 1896); Pascal, C., *Studi critici sul poema di Lucrezio* (Rome 1903); Mahoudeau, P. G., "Lucrèce transformiste et précurseur de l'anthropologie préhistorique" in *Revue anthropologique*, vol. xxx (1920) 165–76; Delvaille, J., *Essai sur l'histoire de l'idée de progrès* (Paris 1910) ch. v.

LUDEN, HEINRICH (1780–1847), German historian and publicist. Luden was born in the principality of Hanover and studied theology at the University of Göttingen. Under the stimulus of Johannes von Müller he turned to the study of history and in 1806 he began teaching at the University of Jena, where he remained until his death.

Luden is one of the most outstanding examples of a scholar who subordinated his entire scientific work to the practical needs of the day. His whole activity was animated by a spirit of national patriotism. As a publicist he edited the *Nemesis* from 1814 to 1818, the *Deutsche Blätter* from 1815 to 1816 and the *Allgemeines Staatsverfassungs-Archiv* from 1816 to 1817. He used these journals first to combat the rule of Napoleon and then to propagate his ideas of German unification along liberal-constitutional lines. His greatest influence was exercised as a teacher at Jena, where he inspired his students with a political

sense of national freedom and unity. He was also largely instrumental in the creation and spread of the *Burschenschaft* movement. Foreign students gathered around him, and his influence came to be particularly associated with the Czech national movement under Palacký. Luden's historical writings were out of date when they appeared and were not based on modern scientific criticism, but they served as a means for stirring up the people and as a tool for the unification movement. His philosophy of history was influenced by the idealist thought of Fichte and Schelling and in a sense he is a forerunner of the national political school of historians of later day Prussia.

In his economic views Luden was a critic of the individualist economics of Adam Smith. He laid more stress on ethical principles and pointed out the automatization and loss of human dignity produced by increased division of labor. In his criticism of economic conditions he was under the influence of Fichte and in his constructive suggestions he was inspired by the spirit of the old *Polizeistaat* (welfare state).

FRANZ SCHNABEL

Important works: *Handbuch der Staatsweisheit oder der Politik* (Jena 1811); *Kleine Aufsätze*, 2 vols. (Göttingen 1807–08); *Allgemeine Geschichte der Völker und Staaten des Altertums* (Jena 1814, 3rd ed. 1824); *Allgemeine Geschichte der Völker und Staaten des Mittelalters*, 3 vols. (Jena 1821–22; 2nd ed., 2 vols., 1824); *Geschichte des teutschen Volkes*, 12 vols. (Gotha 1825–37); *Geschichte der Teutschen*, 3 vols. (Jena 1842–43).

Consult: Luden, H., *Rückblick in mein Leben* (Jena 1847); Haage, J., *Heinrich Luden, seine Persönlichkeit und seine Geschichtsauffassung* (Taura 1930); Schäfer, D., in *Preussische Jahrbücher*, vol. xlvi (1880) 379–400; Reissig, E., "Heinrich Luden als Publizist und Politiker" in Verein für thüringische Geschichte und Altertumskunde, *Zeitschrift*, n.s., vol. xxiii (1916–18) 205–346, and vol. xxiv (1919–20) 54–88, 227–307; Ehrentreich, Hans, "Heinrich Luden und sein Einfluss auf die Burschenschaft" in *Quellen und Darstellungen zur Geschichte der Burschenschaft und der deutschen Einheitsbewegung*, vol. iv (1913) 48–129; Herrmann, F., *Die Geschichtsauffassung Heinrich Ludens im Lichte der gleichzeitigen geschichtsphilosophischen Strömungen* (Leipsic 1904); Pfitzner, J., "Heinrich Luden und František Palacký" in *Historische Zeitschrift*, vol. cxli (1929) 54–96; Brown, W. E., "Heinrich Luden: a Pioneer of Nationalism" in *Contemporary Review*, vol. cxl (1931) 231–38; Mombert, P., *Geschichte der Nationalökonomie* (Jena 1927) p. 274–76.

LUDLOW, JOHN MALCOLM (1821–1911), British social reformer. Ludlow was born in India and educated in Paris, which was then the center of democratic ideas. He went to London in 1838 and was called to the bar in 1843. An intimate friendship with J. F. D. Maurice and Charles Kingsley began in 1848 and with them he started the Christian Socialist movement through the magazine *Politics for the People*, of which he wrote nearly half the contents. In 1849 on a visit to Paris he studied Buchez' *associations ouvrières* and in 1850 persuaded his friends to initiate cooperative production. He planned the constitution of the movement and of its shops, and although E. V. Neale and others soon linked the work with the cooperative stores at Rochdale, Ludlow always maintained that production rather than distribution is the true starting point in any large reform of society. His full scheme was similar to that recently revived as guild socialism. As a lawyer he was able to render real service by the preparation of supporting evidence in promoting the Industrial and Provident Societies Act, which in 1852 gave legal status to cooperative societies; he followed this with other legal activities. In 1854 when his associations began to fail he threw himself into the foundation of the Working Men's College, of which Maurice was the first principal. He was made secretary in 1870 to the Royal Commission on the Friendly Societies and in 1875 became their registrar. In this capacity he was until 1891 the chief link between the government and the whole labor movement and exerted a great though anonymous influence upon the latter's development.

Ludlow was a gifted writer but not a great speaker; his knowledge of France gave him a sympathy with democracy almost unique in his generation; his energy and single mindedness made him the wisest of counselors. To no one does the progressive movement in Britain owe a larger debt. That he has never received proper recognition is due partly to his modesty, partly to his length of days. He always insisted on giving credit for his work to others; he kept studiously in the background and outlived all his contemporaries, so that on his death there was none left to do him honor. The secret of his influence was his combination of knowledge with energy and persistence and his deep and reasonable religious faith. Here he drew inspiration from Maurice; in practical and social matters he was Maurice's guide and adviser.

CHARLES E. RAVEN

Consult: *Christian Social Reformers of the Nineteenth Century*, ed. by Hugh Martin (London 1927) p. 143–62; Raven, Charles E., *Christian Socialism 1848–54* (London 1920).

LUDOGOVSKY, ALEXEY PETROVICH (1840–82), Russian agronomist. Ludogovsky studied and taught at the Gorigoretsky Agricultural Institute, where he continued as docent upon its removal to St. Petersburg in 1868. Shortly thereafter he was appointed professor at the newly created Petrovosko-Razumovskaya Agricultural Academy at Moscow.

The span of Ludogovsky's career coincided with the period of great reforms in Russia, of which the emancipation of the peasants in 1861 was the leading one. At this time questions of economic and technical organization of agriculture assumed unusual importance for the country. As a scientific investigator and teacher at a specialized agricultural college Ludogovsky exerted a direct and far reaching influence in this field. Students trained by him went out to all sections of the country as managers of estates and as technical advisers to zemstvo and other local government bodies. And his great work, *Osnovi selskokhozyaystvennoy ekonomii i selskokhozyaystvennago schetovodstva* (Fundamentals of agricultural economics and farm accounting, St. Petersburg 1875), was the first advanced study of the subject which not only dealt with the technique and management of farming but also afforded a comparative view of economic and social conditions governing the variety of agricultural forms and systems in different countries throughout history. This socio-economic point of view characterized the subsequent development of agricultural economics in Russia as distinguished from farm management and technical agronomy in western Europe. The book itself was used by several generations of Russian agronomists even when the natural scientific views expounded therein became somewhat outmoded. Ludogovsky may justly be considered one of the founders of agricultural economics in Russia.

W. KOSSINSKY

Consult: Schirkovitsch, J., "Ideengeschichte der Agrarwissenschaft in Russland" in *Weltwirtschaftliches Archiv*, vol. xxvii (1928) 104–252.

LUEDER, AUGUST FERDINAND (1760–1819), German philosopher and economist. Leuder was born in Bielefeld, Prussia. In 1786 he became professor of history at Brunswick, in 1810 professor of philosophy and history at Göttingen and in 1817 professor at Jena. He early acquired a comprehensive knowledge of the historical and geographico-statistical literature of his time, and his early works were confined chiefly to translations of accounts of travels and of newly published ethnological works. His study of contemporary foreign writers appears to have led him to political economy. At a time when German university scholarship still held fast to the doctrines of mercantilism Lueder became with Sartorius in Göttingen and C. J. Kraus in Königsberg one of the first to represent the ideas of liberalism in Germany. His chief work in economics, *Über Nationalindustrie und Staatswirtschaft* (3 vols., Berlin 1800–04), was an elaboration of the doctrines of Adam Smith, which he illustrated with numerous examples from history and ethnography. He deviated from Smith, however, in that he emphasized the subjective nature of value and laid more stress on the significance of intellectual and moral factors in the economic development of a nation. His effective exposition of the detriments of slavery and serfdom is noteworthy. In *Über der Veredelung der Menschen, besonders der Juden* (Brunswick 1808) he warmly pleads for the emancipation of the Jews.

Lueder won a permanent place in the development of the social sciences in Germany by his *Kritik der Statistik und Politik* (Göttingen 1812) and *Kritische Geschichte der Statistik* (Göttingen 1817). At a time when *Staatskunde*, or statistics, was universally esteemed as a reliable guide to political action Lueder exposed the limited significance of statistical observations. Statistics inevitably ignores the intellectual and moral forces in society which do not lend themselves to quantitative treatment. He bitterly opposed the contemporary practise of making statistics serve the political ends of governments. Although his charges were exaggerated they were productive of beneficial results to the extent that they contributed to the cessation of government interference in German statistics.

KARL PRIBRAM

Consult: Hasek, Carl W., *The Introduction of Adam Smith's Doctrine into Germany*, Columbia University, Studies in History, Economics and Public Law, vol. cxvii, no. 2 (New York 1925) p. 78–84; Roscher, W., *Geschichte der Nationalökonomik in Deutschland* (Munich 1878) p. 619–24; Saalfeld, Friedrich, *Geschichte der Universität Göttingen* (Hanover 1820) p. 122; John, V., *Geschichte der Statistik* (Stuttgart 1884) p. 133–40; Westergaard, H. L., and Nybölle, H. C. J., *Statistikens teori i grundrids* (3rd ed. Copenhagen 1927), tr. into German by M. Iversen as *Grundzüge der Theorie der Statistik* (2nd ed. Jena 1928) p. 20.

LUEGER, KARL (1844–1910), Austrian politician. Lueger, who came of a family of Viennese petty bourgeoisie, was trained as a lawyer

and began public life as a liberal. In 1875 he was elected to the City Council and in 1885 to the Austrian Parliament. His liberalism had an anti-capitalist tinge reflecting the bitterness of his class against Viennese Jewry, whose role in the upper strata of capitalist society was quite out of proportion to its numbers. While maintaining friendly personal relations with Jews, Lueger became a violent antisemitic agitator. He founded and led the Christian Socialist party, which united Catholic conservatives, prosperous peasants and disgruntled small tradesmen on a religious, antisemitic, reformist platform and included numbers of workers inflamed by antisemitism. The defeat of the bourgeois liberal majority, with its strong Jewish backing, in the City Council, was largely due to Lueger's energetic leadership and brilliant oratory. Refused confirmation by the government four times, he became mayor of Vienna in 1897 on his fifth election. Although his plan of liberal reform of the empire's communal law failed, his administration of Vienna proved him to be more than a mere orator. Reorganizing the city economy on municipal socialist lines he succeeded in a few years in municipalizing the gas, water and street car systems, in surrounding Vienna with a belt of meadow and forest closed to building speculation and in introducing numerous measures of social reform. Definitely anti-Magyar in politics, he favored a united monarchy and cooperated with the house of Hapsburg as a loyal oppositionist; his party became the main bulwark of imperial conservatism. After being a storm center for years he became a popular national figure, regarded as the advocate of sound human understanding. Witty, undoctrinaire, good tempered, inconsistent, his personality and career were characteristic of the Vienna of his day.

THEODOR HEUSS

Consult: Connolly, P. J., "Karl Lueger" in *Studies*, vol. iii (1914) 280–91, and vol. iv (1915) 226–49; Harden, Maximilian, *Köpfe*, 4 vols. (new ed. Berlin 1923–24), tr. as *Monarchs and Men* (Philadelphia 1913) p. 269–86; Jászi, Oscar, *The Dissolution of the Habsburg Monarchy* (Chicago 1929); Kralik, Richard, *Karl Lueger und der christliche Sozialismus* (Vienna 1923).

LULL, RAMÓN (*c.* 1232–1315), Spanish missionary and philosopher. Lull, who was born in Majorca shortly after its reconquest from the Moslems, abandoned a courtier's life in order to help accomplish the universal dominance of Christianity, the single aim of his complicated ideology. While this included the liberation of the Holy Land, his methods of combating Islam contrast markedly with the warlike crusading of his time; he learned Arabic and devoted himself to a thorough study of the Moslem books and doctrines. He was a constant advocate of this type of special preparation for proselytizing, the modernity of which impresses present day missionaries. In the end he adopted certain Islamic ideas and practises; Ribera and Asín Palacios have demonstrated that he was a Christian Sufi indebted especially to the Murcian mystic, Muḥīy al-Dīn ibn-'Arabi. Lull addressed himself to the people, utilizing allegories, apologues and even graphic representations; by extensive use of the vernacular he made Catalan the first modern tongue to become the instrument of philosophy. He taught at the University of Paris and traveled extensively in Mediterranean lands, propagating his ideas or engaging in direct missionary activity.

Lull's philosophic works, which he believed were written by divine inspiration, display the characteristics of scholasticism and mediaeval science. While many of his ideas were perhaps unrealizable, the social, educational, ecclesiastical and political reforms which he advocated were on the whole not those of a fanatic. They were based on general mediaeval, Catalan and even Moslem institutions with which he was familiar, and which he sought to infuse with a Christian spirit. According to Menéndez y Pelayo, in his utopian novel *Blanquerna* (*c.* 1283; tr. by E. A. Peers, London 1926) Lull displays a greater practical sense than Plato, More, Campanella and other creators of ideal commonwealths: the hero becomes pope, reforms the college of cardinals in accordance with a Sufi institution and makes the papacy the instrument of universal reform and missionary activity. In the *Libre de cavayleria* (*c.* 1276–86; tr. by W. Caxton as *Book of the Order of Chivalry*, new ed. by A. Byles, London 1926), widely popular in the later Middle Ages, Lull finds the origin of chivalry in a species of social compact and its object in the maintenance of justice. *Liber de gentili et tribus sapientibus*, also very popular, was modeled apparently on the *Kuzari* of Jehuda Halevi in its search for the true religion through the arguments of representatives of Judaism, Christianity and Islam. While this work displays a remarkable spirit of tolerance for its age, Lull was not consistent in his deprecation of the use of force to propagate Christianity.

As author and translator he helped transmit Moslem culture to Europe; he also founded a

short lived monastery for the study of Arabic. In 1311, apparently through his influence, the Council of Vienne ordered that oriental languages be taught in several of the universities. Although his philosophic doctrines were suspected of heresy they were taught for centuries; and while their adherents have been relatively few in recent times, some have sought to make Lull the national philosopher of Catalonia. He is revered as the patriarch of Catalonian literature.

ANGEL GONZÁLEZ PALENCIA

Works: *Opera omnia*, ed. by Yvon Salziner, 8 vols. (Mainz 1721–42); *Obras completas*, ed. by J. Rossello and M. Obrador y Benassar, vols. i–xiv (Palma di Majorca 1901–28).

Consult: Peers, E. A., *Ramon Lull* (London 1929); *Histoire littéraire de la France*, vol. xxix (Paris 1885) p. 1–386; Probst, J. H., *Caractère et origine des idées du bienheureux Raymond Lulle* (Toulouse 1912); Ribera, Julián, "Orígenes de la filosofía de Raimundo Lulio" in *Homenaje á Menéndez y Pelayo*, 2 vols. (Madrid 1899) vol. ii, p. 191–216; Gottron, Adam, *Ramon Lulls Kreuzzugsidéen*, Abhandlungen zur mittleren und neueren Geschichte, vol. xxxix (Berlin 1912); Altaner, Berthold, "Glaubenzwang und Glaubensfreiheit in der Missionstheorie des Raymundus Lullus" in *Historisches Jahrbuch*, vol. xlviii (1928) 586–610; Menéndez y Pelayo, M., *Orígenes de la novela*, 4 vols. (Madrid 1905–15) vol. i, p. lxxii–lxxxvi; Pastre, Lluis, "La pedagogía de Ramón Lull" in *Quaderns d'estudi*, any ii, vol. ii (1916–17) 190–203; Asín Palacios, M., "El lulismo exagerado" in *Cultura española*, vol. i (1906) 533–41.

LUMBER INDUSTRY *See* WOOD INDUSTRIES.

LUSCHAN, FELIX VON (1854–1924), German anthropologist. Von Luschan did important work in linguistics, archaeology, physical anthropology and technology, displaying great erudition and industry. He began anthropometric field work in Lycia in 1881 and for the next thirty years collected data bearing on the natural history of man in western Asia. He measured the cephalic indices of over 1200 Jews and found their range to be from 65 to 98—a range as wide as that of the human race. This and other data adduced by him enabled him to prove incisively that the concept of a Jewish race was erroneous. By his studies in 1889 and 1890 on the inheritance of the cephalic index in Greek families of Adalia he showed that religion tends to isolate and perpetuate a physical type by demanding inbreeding and that a homogeneous type is frequently found in isolated remote mountain communities. He believed the original historic inhabitants of western Asia to have been a homogeneous melanochroid race with extremely broad heads and with "Hittite," or beaked, noses; the Kurds, however, he regarded as a Nordic race which had maintained its purity for more than thirty centuries. In his Huxley memorial lecture in 1911 he stressed the fact that "language, religion, nationality, and race are quite distinct conceptions . . . again and again confounded by the general public and by the press."

In 1918 von Luschan published his important paper on historical contacts and convergence, with illustrations from many phases of culture, particularly from the field of technology. His conclusion was that similarities in culture are in some cases explicable in terms of historical contacts or divergences, in others by convergence. He maintained that the Egyptians had acquired knowledge of ironworking from Negro tribes rather than vice versa.

WILSON D. WALLIS

Important works: "Die anthropologische Stellung der Juden" in *Korrespondenz-Blatt*, Deutsche Gesellschaft für Anthropologie, Ethnologie und Urgeschichte, vol. xxiii (1892) 94–100; "Rassen und Völker" in *Weltgeschichte*, ed. by J. von Pflugk-Harttung, vol. i (Berlin 1909) p. 39–79; "The Early Inhabitants of Western Asia" in Royal Anthropological Institute, *Journal*, vol. xli (1911) 221–44; *Entstehung und Herkunft der ionischen Saule*, Der alte Orient, vol. xiii, pt. iv (Leipsic 1912); *Kriegsgefangene, ein Beitrag zur Völkerkunde im Weltkriege* (Berlin 1917); "Zusammenhänge und Konvergenz" in Anthropologische Gesellschaft in Wien, *Mitteilungen*, vol. xlviii–xlix (1918–19) 1–117; *Völker, Rassen, Sprachen* (Berlin 1922, new ed. 1927).

Consult: Virchow, Hans, in *Zeitschrift für Ethnologie*, vol. lvi (1924) 112–17; Wissler, Clark, "Felix von Luschan and His Collections" in *Natural History*, vol. xxvi (1926) 650–51.

LUTHER, MARTIN (1483–1546), German religious reformer. The Reformation of Martin Luther led not only to a religious but also to a social revolution of the greatest significance and the most far reaching consequences, but these results lay entirely outside the original intent of the reformer. Luther did not proceed from a criticism of the external faults of the Catholic church and of the society governed by it (as did Wycliffe, Huss and other precursors) but exclusively from questions of the wholly personal religious experience. He was a monk, and the agonizing quest for divine grace which brought forth his new religious ideas may best be understood as a fruit of monasticism. Not the conquest and mastery of the world by Christianity, not the transformation of its culture and society by the Christian idea, not the organization of a powerful world church, is the essential intention of this monastic ascetic, but the reconciliation of

the individual soul with its God. From this arises a religious ethics of the individual which it is very difficult to broaden into a social ethics. If the question always remains only that of gaining the right emotional attitude of the individual believer to God, then the social world about us becomes proportionately unimportant. Luther recognized the world order as ordained by God or at least as enjoying His sufferance. It was therefore God's command to adapt one's self to the given conditions and acquiesce in them, only taking pains to preserve within this world order all the Christian virtues. From this doctrine arises a strong political conservatism which enjoins on the subject unconditional allegiance even toward an unjust and impious ruler, which forbids the serf to desert his master even if he be a Turk and the German peasant to revolt against his hard and unjust bailiff. In the German Peasants' War of 1524–25, it is true, Luther at first preached conciliation to both sides but then with merciless severity opposed the rebellion. His works reveal no mention of ideas of social reform. As a son of a peasant he shared the traditional economic and social views of his time concerning agriculture, industry, trade and business. His social and political views were essentially patriarchal in character. Every man is placed in his class according to his calling and must remain there; the family is the most important constituent of the state order, and the state is a sort of great family in which the Christian fathers care for their subjects as the father of a family looks after the welfare of his group.

Luther, however, was always far more than a monastic ascetic, allowing himself to drift in the world with no attempt at improving it. He looked for nothing, it is true, from external arrangements and nothing from ecclesiastical institutions, least of all from the political power of a hierarchically composed church of priests. He annihilated this church of priests and proclaimed the universal priesthood of the faithful. But despite his individualistic principles he immediately established a new territorial church. He became, despite the narrow political situation in which his church found itself engaged, a national educator in the grandest style. With the holy zeal of a prophet he set about to convert the character of mankind. This conversion should be accomplished by the "word of God," the preaching of which he felt to be his professional duty as "minister of souls" and professor. The word of God, however, involved moral demands which Luther proclaimed to the conscience of men with full and outspoken force: absolute love in the sense of Jesus' Sermon on the Mount in place of self-seeking; and absolute, boundless confidence in God in place of self-confidence. Here Luther knows no evasion, no compromise. He knows nothing of abatement or shading off of the command to love in order to adapt it to the various earthly callings, as did the mediaeval church; nothing of a compromise between natural requirements of human importance and authority and the command of exclusive confidence in God, like the Christian humanism of an Erasmus; nothing of "natural" moral dignity and ability of mankind; nothing of a moral gradation of the various classes and professions. Even the state, or rather the ruling power, is for him simply a profession like any other, and he does not propose to withdraw his moral demands before the sphere of politics. The command of boundless love of God and of one's neighbor is no longer to be fulfilled outside the world as in the old monasticism but within the world in the daily callings of natural men; but in this it is to lose nothing of the absoluteness of its claim to importance. No earthly demands for happiness, no considerations of social or political interests, are of any importance whatsoever as against this rigorousness of duty.

Calvin starting out from similar religious ideas sought to realize this moral ideal by means of ecclesiastical dispositions, by means of the separation of a community of saints from the world and the preservation of their purity as a class with the aid of church discipline. Luther does not believe in the possibility of separating clearly from each other true and false Christians, the "chosen" and the "rejected." He knows that true Christians are few and will always be few and that Christian princes will be fewest of all. A devout prince, he says, is "rare game in Heaven." Sober and without illusions he looks at the world as it really is. It is as a whole like the heart of every individual Christian the scene of an eternal, ever seething struggle between God and the devil. But that does not discourage him. Without hoping ever to conquer the world as a whole for God or even to be able merely to rescue individual Christians definitely from the temptation of evil he takes up the struggle over the character of mankind, the struggle for God against Satan. His religion is the religion of a heroic *Willensmensch* who bears about in his own breast the contradictions of good and evil which rend the world asunder. Its greatness has been understood only by a few. Melanchthon attenu-

ated it and adapted it to the requirements of natural reason. Its irresolvable internal contrarieties have filled the spiritual life of Germany with ever new tensions.

GERHARD RITTER

Works: *Dr. Martin Luthers Werke*, critical collected ed. by J. K. F. Knaake and others, vols. i–liv (Weimar 1883–1930), selected and tr. by C. M. Jacobs and others as *Works*, vols. i–iv (Philadelphia 1915–31).

Consult: Köstlin, Julius, *Martin Luther, sein Leben und seine Schriften*, ed. by Gustav Kawerau, 2 vols. (5th ed. Berlin 1903); Boehmer, Heinrich, *Luther im Lichte der neuen Forschung* (5th ed. Leipsic 1918), tr. by E. S. G. Potter as *Luther and the Reformation in the Light of Modern Research* (London 1930); Ritter, Gerhard, *Luther: Gestalt und Symbol* (2nd ed. Munich 1928); Holl, Karl, *Gesammelte Aufsätze zur Kirchengeschichte*, 3 vols. (Tübingen 1921–28, vol. i, 4th ed. 1927) vols. i, iii; Smith, Preserved, *The Life and Letters of Martin Luther* (Boston 1911); Mackinnon, James, *Luther and the Reformation*, 4 vols. (London 1925–30); Troeltsch, Ernst, *Die Soziallehren der christlichen Kirchen und Gruppen*, in Gesammelte Schriften, vol. i (3rd ed. Tübingen 1923), tr. by Olive Wyon, 2 vols. (London 1931) vol. ii, p. 461–576; Joachimsen, Paul, *Sozialethik des Luthertums*, Veröffentlichung der Luther-Gesellschaft (Munich 1927); Pauls, Theodor, *Luthers Auffassung von Staat und Volk*, Bonner staatswissenschaftliche Untersuchungen, vol. xii (Bonn 1925); Waring, L. H., *The Political Theories of Martin Luther* (New York 1910). For the best Catholic views see Grisar, Hartmann, *Luther*, 3 vols. (Freiburg i. Br. 1911), and *Martin Luthers Leben und sein Werk* (2nd ed. Freiburg i. Br. 1927); Denifle, H. S., *Luther und Luthertum*, ed. by A. M. Weiss, 4 vols. (2nd ed. Mainz 1904–09), vol. i tr. by Raymond Volz (Somerset, Ohio 1917).

LUXEMBURG, ROSA (1870–1919), Polish German socialist and economist. A member of the proletarian party in Poland, Rosa Luxemburg fled from the Russian police to Zurich, where she studied law and economics and became a Marxist. In her doctor's dissertation, the first complete study of Polish industry, she revealed its close ties with the Russian economic structure and the resulting indifference of the Polish bourgeoisie to demands for national independence and demonstrated that the idea of an independent Poland was advocated by reactionary small shopkeepers and the ruined landed nobility. Consequently she advocated Polish autonomy within Russia rather than Polish independence as a working class demand. In opposition to the chauvinistic Polish Socialist party (P.P.S.) she helped found in 1893 the Social Democratic party of Poland and Lithuania as a branch of the Marxian Russian Social Democracy.

In 1896 Rosa Luxemburg settled in Germany, where she soon became a leading theorist of the Social Democracy. Defending the orthodox position against Bernsteinian revisionism she maintained that capitalism despite outward appearances had entered a period of collapse, of increasing crises, wars and revolutions. The thesis of her principal economic work, *Die Akkumulation des Kapitals*, is as follows: In capitalist economy the contradiction between productive capacity and the possible outlets for products constantly increases. In a pure capitalist society (made up only of capitalists and their dependents on the one hand and of workers on the other) there would not be sufficient outlet for all goods produced; actually a portion of them must be sold to "third persons," i.e. to farmers and artisans within the capitalist country and to countries with primitive methods of production. As a result the antiquated methods are destroyed, the backward countries are annexed to capitalism and the fundamental dilemma of capitalist economy becomes more acute. The impulse to expand and to monopolize markets consequently grows stronger, and imperialism becomes the guiding principle of foreign policy. With the exhaustion of the possibilities of expansion capitalism would reach the limits of its development and existence; in reality, however, it must collapse even earlier as a result of the profound social convulsions which are stimulated by the expansion, and thus revolution must occur, leading to the victory of the working class.

On the basis of this theory Rosa Luxemburg defined as the goal of the working class the acquisition of political power by force and held that all its immediate activities must be related to that end. As a result of her experiences in the revolution of 1905–06, in which she took a leading part in Warsaw, she advocated the general strike as a revolutionary weapon. After 1907, centering her attention on militarism and the war danger, she rejected pacifist ideas as utopian and stressed proletarian mass action as the sole means of eliminating war.

From this time forward she was on the extreme left of the Social Democracy. Although she disagreed with them on organizational questions, holding that the rigid centralization in the Russian party defended by Lenin must give way to a more democratic organization, concerning all other important matters she held the same position as the Russian Bolsheviks. At the International Socialist Congress in Stuttgart in 1907 she and Lenin composed the resolution which demanded a revolutionary struggle for the over-

throw of capitalism in time of war. Immediately after the outbreak of the World War she attacked the patriotic policy of the Social Democracy and with Leo Jogiches, Clara Zetkin, Franz Mehring and Karl Liebknecht founded the Spartakusbund to arouse revolutionary antiwar sentiments in the working class. Except for five months she was in prison from February, 1915, until the end of the war. Nevertheless, she influenced the revolutionary movement, largely through writings which she smuggled out of prison. After the collapse of the empire she called for a proletarian revolution; although she was at first critical of some Bolshevik policies, in the heat of actual struggle she formulated a similar program for Germany and late in 1918 she led in founding the German Communist party. After the defeat of the Berlin workers' rising (*Spartakuswoche*), in which although she regarded it as premature she played a leading and daring role, she was arrested at the order of the Ebert government; on January 15, 1919, together with Karl Liebknecht, she was assassinated by the White soldiers in whose custody she had been placed.

PAUL FRÖLICH

Important works: *Die industrielle Entwicklung Polens* (Leipsic 1898); *Sozialreform oder Revolution?* (Leipsic 1899, 2nd ed. 1908); *Massenstreik, Partei und Gewerkschaften* (Hamburg 1906, 3rd ed. Leipsic 1919); *Die Akkumulation des Kapitals* (Berlin 1913); *Die Krise der Sozialdemokratie*, first published under pseudonym "Junius" (Berne 1916), English translation (New York 1918); *Die russische Revolution*, ed. by Paul Levi (Berlin 1922); *Briefe aus dem Gefängnis*, Internationale Jugendbibliothek, no. x (3rd ed. Berlin 1922); *Briefe an Karl und Luise Kautsky*, ed. by L. Kautsky (Berlin 1923), tr. by L. P. Lochner (New York 1925). Of her collected works edited by Clara Zetkin and Adolf Warski volumes iii, iv, and vi (Berlin 1923–28) have appeared so far.

Consult: Lukács, Georg, *Geschichte und Klassenbewusstsein*, Kleine revolutionäre Bibliothek, vol. ix (Berlin 1923); Radek, Karl, *Rosa Luxemburg, Karl Liebknecht, Leo Jogiches* (Hamburg 1921); Rosenberg, Arthur, *Die Entstehung der Deutschen Republik* (Berlin 1928), tr. by Ian F. D. Morrow (London 1931); Price, M. Philips, *Germany in Transition* (London 1923).

LUXURY. The concept of luxury, viewed as an excess of natural consumption or of money expenditure hedonistically desirable but morally somehow objectionable, seems to contain as its rational basis two elements from which both its historical account and its theoretical analysis must start. One, and the more relativistic, is the comparative degree of consumption and spending, not so much as between individuals as within the pyramid of social income strata and corresponding standards of living—comparative both from the point of view of one period and from that of historical development. The second element is not thus subjective but centers on the relation of certain methods and quantities of expenditure—i.e. of the consumptive use of the national income as divided among social classes —to the methods and quantities of productive services required to guarantee that "national dividend" as the fund for individual or class expenditure.

The first economic formulation of the luxury concept appears in a naïve way to be based entirely on the former comparison, that between different periods or groups of expenditure. The taxation of the objects or procedures of luxurious consumption has aimed at two purposes, on the surface contradictory: the suppressing or limiting of this consumption and the deriving of a public income from it. (A similar contradiction occurs in public finance between protective and fiscal customs duties.) On closer inspection a good deal of this contradiction vanishes, when it is seen that prohibition and taxation of luxury tend equally to fix certain levels and standards of living, as against economic and social progress, which is tending to "level" such differences. The mediaeval prohibition or taxation of luxury, e.g. in clothing or food, in one group of society, coupled with permission and freedom from taxation in another, is of course economically equivalent to mere prohibition or taxation regardless of group distinctions in later societies stratified chiefly according to money incomes, because there the money economy alone enables the groups higher up in the pyramid to bear the burden of taxation or to evade the prohibition.

Luxury as an economic concept might thus seem to be resolved into a mere corollary of social stratification, the weapon with which "upper classes" constantly try to fix existing differential expenditures (and thereby indirectly divisions) of income or at least to slow down the rate of social imitation of "lower classes." Although a very important aspect of the luxury problem, this view by no means furnishes a complete analysis. First of all, the social structure of "demand" as the basis both of the expenditure (and saving) and to a large extent also, through cultural minimum concepts, of the production of national and class income can hardly be taken as the mechanical addition of "higher" to "lower" wants and satisfactions—an assumption characteristic of many doctrines of value inspired by utilitarian or hedonistic concepts of

"progress." Although social innovations to us inseparable from "civilization," such as the handkerchief, the toothbrush or the bathtub, are apt to be regarded as typical of the way this progress has of converting luxuries into necessaries, it would scarcely be justifiable to argue further either that corresponding wants before the emergence of those innovations had not been satisfied at all or that these were a priori the only means of their satisfaction.

Thinking in systems and cycles instead of in simple progressive lines is as necessary in the study of the phenomena of luxury as in all other departments of the social sciences. Fashion is now definitely understood as a cycle of variations from long term trends of custom. In the same way luxury embodied in particular objects and practises must be taken to follow lines of descent as well as ascent. An example of an especially long term trend is the quantitative luxury of food characteristic of "natural" economies unable to cope with their surplus in kind, such as those of the decadent periods of the ancient world and even more of the late mediaeval and early modern centuries. Both the wide range and the economic and social conditioning of variations in the definition of luxury are brought out by a comparison of such periods with the precarious feeding of many primitive or stabilized civilizations and, on the other hand, with the declining taste for even qualitatively luxurious food and cooking exhibited by the modern mechanized mass society.

One might again try to establish a law of cyclical variation of luxury ideals with regard also to different social groups or classes. As yesterday's fashion of a higher or more developed (e.g. urban) group may become today's fashion of a lower or less developed (e.g. rural) group, so it may be with luxuries. Food luxury certainly lingers in rural surroundings long after it has ceased to be the ambition of urban populations, and in a very similar line of development or rotation the hoarding or even wearing of luxurious durable textiles is making room for rapid changes of quickly outworn materials and patterns. It is important, however, not to see these developments in a too rigidly irreversible outline. As it is a mistake to consider the old regional dresses (*Volkstrachten*) of Europe as nothing but the petrified remains of older aristocratic or urban dresses, so it would be fallacious to think of luxuries as ever spreading universally or as descending the social ladder until the day of the "classless society" and anticipating the latter's regardlessness of historical or geographical diversities.

The subjective and relativistic analysis of luxury becomes capable of a more objective turn with the posing of the questions: How does luxurious expenditure in certain fields or a general tendency toward it affect the national dividend, first directly through the spending and saving of the income of various groups and then indirectly through the increase or diminution of productive work or service of all kinds as the equivalent of all incomes? From either point of view luxury may be approved or condemned along familiar lines of economic reasoning. Societies seem instinctively to dread luxury as an instrument capable of tapping the roots both of conservation and of progress, menacing on the one hand, through overspending, the necessary investment funds for replacement and enlargement of real capital and on the other, through decadence, the springs of economic and social activity. The strongest and most consequential outbreak of such awareness in history has doubtless been that manifested in the ascetic frame of mind which accompanied the early rise of capitalism in modern Europe and more particularly in the famous spirit of Puritanism. In classical antiquity it had appeared most explicitly in the stoic philosophy. In most of the earlier and in a large part of the later writing on luxury there has been a confusion of ethical and economic considerations. In economic theory criticism of the role of luxury has been most impressively expressed by Alfred Marshall, whose distinction between "artificial" wants and wants creative of new activities is basic to the whole structure of his principles.

Opposite and quite as familiar views have emphasized, especially since the origin of modern economic theory in the early capitalistic age, the importance of luxury consumption—as centering, for example, in the courts of the sovereign princes and the households of their titled and bourgeois imitators—in "bringing money among the people": not only maintaining the traditional handicrafts and manufactures serving this consumption but also giving rise to many new industries either imported from abroad or developed autonomously. The social and economic aspects of luxury production were widely discussed by most of the social philosophers and social scientists of the eighteenth century. Mandeville's *Fable of the Bees* presented in allegorical form the argument that luxury production is a source of work. David Hume pointed

out the social benefit of luxury production, while the physiocrats analyzed its effects on the national economy. The mercantilistic doctrine of the balance of trade has often been interpreted as hostile to the rise of luxury trades. On the contrary, it was averse only to the importation of foreign made luxuries; and in each country adherents of the doctrine sought to foster their domestic fabrication especially for foreign markets even by means of the importation of foreign artisans and entrepreneurs, practically the only form of capital migration known to that period. It is true that mercantilistic teaching sometimes includes an inveighing against luxury without distinction between foreign and domestic products, notably in the case of the "colonial" beverages and foodstuffs so important in the age of colonial rivalry. But fundamentally this is nothing but a crude theoretical reformulation of the mediaeval ethics of consumption according to "estates." Instead of (or as well as) being morally illicit, certain standards of living are reserved to some classes and prohibited for others, because it is felt that in the case of the latter they would disturb the balance of the social economy by destroying habits of industriousness and promoting supply prices of labor disruptive of the wages market.

There can be on the whole no question as to how deeply the industrial progress of early capitalism was indebted to the ever increasing and diversified demand for luxuries, chiefly in dress but also in all spheres of an artistic style of life, exercised by the old feudal and the new moneyed aristocracy. The rise in importance of the lower middle classes in America and Europe after the World War appears to be in many respects a parallel economic phenomenon. The development of what have been called the "new industries," such as motor cars, artificial silk, cosmetics, cinema, radio and other electric machinery, together with the substitution for coarser cereal foods of daintier vegetables and animal products represents a new turning point in the mutual adjustment of technically advancing production and socially enlarged consumption, in the evaluation of which the millions of unemployed reduced to starvation are not to be forgotten. This process has already created for its own theoretical justification an economic doctrine, that of the beneficial purchasing power of high and rising wages and the corresponding dangers of saving, which has not incorrectly been likened to the early capitalistic doctrine of the usefulness of upper class luxury. The only conditions under which either theory can hold good are also the same: first, the preservation or adaptation of the equilibrium between purchasing power created in different places or turned to new uses and the rest of the system of productive and consumptive processes forming the national economy; and, secondly, as a long time consideration the prevention of disturbances or the compensation for losses arising from the relative waste or over-refinement inseparable from luxury. As the usefulness of early capitalistic luxury was combated by the English "industrialist" economists, so the extravagance of many modern governments in incurring and encouraging expenditure for "social" purposes has begun to be severely criticized. With the older controversy still unsettled, a new epoch seems to put modern civilization before the alternative either of clinging to the capitalistic system with higher although less equalized standards of living or of embarking on a communistic planned economy with a primarily equalized although possibly very low standard.

Economic theories of both the supply of and the demand for luxury goods are bound to reflect the circumstances and attitudes implicit in the economic background of their respective periods. Both the producers of luxuries and the governments singling them out for a moderate special taxation naturally assume at first a limited but rather inelastic demand for such goods, such as that actually represented by the upper classes of a feudal society. Next governments and after them producers become aware of a growing elasticity and restiveness of a luxury demand which is on the one side harassed by taxes and on the other served by supply at decreasing costs, a condition which tends to eliminate the stimulus of rarity so indispensable to the concepts of fashion, luxury and even of value in general. It was at about this stage in the economic process that Alfred Marshall depicted the artificial wants of the rich as highly inelastic except where the craving for social distinction, growing stronger than any direct gratification of taste, makes them "almost insatiable," while the demand of the middle classes shows considerable responsiveness to rising or falling prices of "moderately expensive" luxuries and the laboring class is condemned to inelasticity at the other end of the curve. Since Marshall's time the rise of just this last class has changed conditions to a degree resulting in the introduction of the term mass luxuries (for the products of the new industries) into the terminology of the

theory of consumption. The term reflects the fact that the demand for these products has hitherto betrayed (e.g. in the ratio of expenditure to saving) something like the positive inelasticity by which Marshall defined the luxury expenditure of the upper classes. The advocates of this new mass luxury consumption can rely on an argument hardly available to the defenders of upper class luxury except in the light of an incitement to leadership and enterprise—the contribution of this consumption toward the upkeep of the physical and mental labor resources of society and of its moral and legal balance and stability. Here too the burden of proof is difficult to allot as between this view and the pessimism of those who fear the recurrence of the threat of decadence from any luxury.

One thing should be evident in view of the fact that the theory of luxury forms a special part of the more general theory of consumption. The thoroughly justified stress laid by the advance of "subjective" value theories on the empirical study of demand functions should not blind economists to the more objective conditions ruling both demand and supply of given strata of goods and services, or rather ruling the interaction of this demand and supply. If the study of static demand from price statistics is supplemented, as to longer periods, by the study of dynamic demand from family budget statistics, the latter still have to look for their ultimate explanation to the description and theory of the social and economic change governing the cycle of production and consumption over whole periods or systems. The history of luxury production in its interdependence with luxury consumption will be able to furnish valuable clues in this direction. Is or is not modern industrial and commercial mass production capable of keeping up the artistic and other cultural standards for which the aboriginal "home industry" and handicraft of so many periods and countries have been famous? How far is the proverbial "dictate" of the modern producer and distributor to the consumer encouraging or discouraging new kinds of genuine luxury? Finally, is the quick invention and spread of cheap substitutes for expensive monopolized luxury articles resulting in a mere speeding up of the race after luxurious varieties or in a slow flattening down of the social differences of consumption? The answer of history to these questions will depend in a marked degree upon the general trend of European and American culture, but it will depend also upon the development of their material resources. To understand this relationship one need only think of the interdependence between luxury and monetary uses of the precious metals; of the constant pressure of the "synthetic" devices of the modern chemical industries on the market of pearls and precious stones; of the reorganization of modern fur production and marketing as a consequence of both the exhaustion of the old colonial areas of production and the introduction of cheaper raw materials through the refined technique of dressing and imitation.

The position of labor in luxury production has been as double edged as the economic and social meaning of luxury itself. In every country there are instances of labor, in some cases of an old domestic standing and training, exploited by middleman and commission systems, which make large profits in luxury markets. On the other hand, there is no lack of luxury industries and handicrafts which have been handed down from generation to generation of the same stock of artisans. Moreover if the production of highest or exceptional qualities of most commodities is considered as a kind of luxury level of industry generally, a regular feature of this level is seen to be the traditional cultivation of élite groups of engineers, designers and workmen, if only under the threat of possible competition, inland or foreign, for their services.

In this connection two far reaching theoretical conclusions must be drawn from the history of luxury. First, all the fine arts are in one respect parts of social luxury consumption and production; and it is only under the stress of the extreme division of labor contingent upon modern civilization that the artist has lost the consciousness of being an artist, and vice versa. The artistic interest, stimulated by the more vainglorious sides of the capitalistic demand for works of art, has in modern times centered onesidedly upon the real or fabricated treasures of past ages to the exclusion of much highly qualified contemporary artistic effort, which is as a result coming to be degraded into artistic handicraft or even resulting in an artistic proletariat. The ultimate outcome of this competition between past and present luxury will possibly be decided by the second factor to be mentioned—the role played by governments and other public institutions in the demand for luxury production. Democracy has necessarily turned the expenditure of these institutions, where it transcends the boundaries of the socially useful, to fields like public festivals and recreations instead

of to that display of politically "representative" splendor characteristic of the older monarchies and aristocracies. It remains to be seen whether the huge sums which nevertheless are spent for representative purposes by democratic and even more by communistic governments will add to the subjective character of public luxury the more objective and enduring values which are embodied in the great art of past religions and states.

CARL BRINKMANN

See: CONSUMPTION; STANDARDS OF LIVING; SUMPTUARY LEGISLATION; EXCISE; SALES TAX; ADVERTISING; FASHION.

Consult: Roscher, Wilhelm, "Über den Luxus" in his *Ansichten der Volkswirtschaft*, 2 vols. (3rd ed. Leipsic 1878) vol. i, p. 103–203; Baudrillart, H. J. L., *L'histoire du luxe privé et public depuis l'antiquité jusqu'à nos jours*, 4 vols. (2nd ed. Paris 1880–81); Sombart, Werner, "Luxus und Kapitalismus" in his *Studien zur Entwicklungsgeschichte des modernen Kapitalismus*, 2 vols. (Munich 1913) vol. i, and *Der moderne Kapitalismus*, 3 vols. (vol. i 6th ed., vol. ii 4th ed., Munich 1921–27) vol. iii, chs. xxxvii–xxxix; Veblen, T., *The Theory of the Leisure Class* (new ed. New York 1912); Brinkmann, Carl, *Wirtschaftsform und Lebensform*, Heidelberger Universitätsreden, no. 17 (Heidelberg 1932); Schumacher, Hermann, "Die Organisation des Weltmarkts fur Qualitätswaren" in *Der internationale Kapitalismus und die Krise*, Festschrift für Julius Wolf (Stuttgart 1932) p. 43–76; Wirminghaus, A., "Die Lehre von der Konsumption und ihrem Verhältnis zur Produktion" in *Die Entwicklung der deutschen Volkswirtschaftslehre im neunzehnten Jahrhundert*, Gustav Schmoller zur siebenzigsten Wiederkehr seines Geburtstages, 2 vols. (Leipsic 1908) vol. i, ch. xii, p. 23–31; Oldenberg, K., "Die Konsumtion" in *Grundriss der Sozialökonomik*, vol. ii, pt. i (2nd rev. ed. Tübingen 1923) p. 188–263; Koch, A., *Wesen und Wertung des Luxus* (Tubingen 1914); Landauer, Carl, *Die Theorien der Merkantilisten und der Physiokraten uber die ökonomische Bedeutung des Luxus* (Munich 1915); Heckscher, Eli F., *Merkantilismen, ett led iden ekonomiska politikens historia*, 2 vols. (Stockholm 1931); Gaffiot, M., "La théorie de luxe dans l'oeuvre de Voltaire" in *Revue d'histoire économique et sociale*, vol. xiv (1926) 320–43; MacBride, R. I., *Luxury as a Social Standard* (New York 1915); Urwick, E. J., *Luxury and Waste of Life* (London 1908).

LUZZATTI, LUIGI (1841–1927), Italian statesman. Luzzatti, the son of a wealthy Jewish Venetian family, became interested at an early age in the liberal reformist solution of the social problem. Charged with treason by the Austrian government for organizing a mutual aid society among the gondoliers, he fled to Milan, where he taught economics at the technical institute from 1863 to 1866. At this time he published *La diffusione del credito e le banche popolari* (Padua 1863), which marked the beginning of his lifelong advocacy of people's banks in Italy. In 1866, when the Venetian provinces were freed from Austrian rule, he was appointed to the chair of public law at Padua; he later taught this subject at Rome from 1907 until the end of his life. In 1867 he published *La chiesa e lo stato nel Belgio* (Milan), the first of a long series of essays on religious freedom collected in *Libertà di coscienza e di scienza* (Milan 1909; 2nd rev. ed. as *Dio nella libertà*, Bologna 1926; tr. by A. Arbib-Costa as *God in Freedom*, New York 1930). These as well as specific appeals in favor of Rumanian and Polish Jews and Turkish Armenians won him international fame as a champion of religious toleration and civil equality for national minorities.

As a protégé of Marco Minghetti he was appointed in 1869 secretary general for agriculture, an unusual distinction for a man of twenty-eight. He became a member of Parliament in 1871, as soon as he attained the necessary age, and was continually reelected until 1921, when he was appointed to the Senate. He was minister of finance in four cabinets during the years 1891 to 1906; minister of agriculture, industry and commerce in 1909–10; premier in 1910–11; and minister of finance once more in 1920. A moderate liberal, he promoted a great deal of legislation dealing with industrial accidents, woman and child labor, old age, emigration, housing, vocational training and cooperation. Neither a free trader nor a protectionist, he initiated for Italy a policy of commercial treaties, no fewer than twenty-four of which he negotiated personally; the most important of them was the provisional accord with France which terminated the tariff war in 1898. A novel feature of some of them was a supplement providing for the mutual regulation of labor conditions. As minister of finance Luzzatti was responsible for considerable economies during a critical period of Italian finances and the conversion of the national debt of 8,100,000,000 lire with a reduction in interest from 4 to $3\frac{1}{2}$ percent, an operation which in 1906 he carried out most successfully despite its magnitude.

LUIGI EINAUDI

Works: *Memorie autobiografiche e carteggi*, vol. i– (Bologna 1931–).

Consult: Alessio, Giulio, in Reale Istituto Veneto di Scienze, Lettere ed Arti, *Atti*, vol. lxxxvii (1927–28) pt. i, p. 17–91, containing a bibliography of Luzzatti's works; Gobbi, U., in *Giornale degli economisti*, 4th ser., vol. lxvii (1927) 217–26; Alvarez, A., in Académie des Sciences Morales et Politiques, *Séances et travaux . . . Compte rendu*, vol. xc (1930) pt. ii, p. 381–408.

LYELL, CHARLES (1797–1875), British geologist. Lyell was born in Scotland but passed most of his childhood in the south of England. At Exeter College, Oxford, he originally prepared for law; but while there he attended Buckland's lectures on geology, and the interest thus awakened in that science was further developed during a vacation tour in Europe. Two years after his admission to the bar Lyell abandoned the legal profession to devote himself to the study of geology, which had at first been merely a hobby but soon became the major concern of his life.

At the very start of his career as a geologist Lyell found himself in the midst of one of the major controversies of science. He was soon aligned with Murchison against the strong group of "catastrophists" led by Buckland and Coneybeare, who relied on the Noachian Deluge and other cataclysms of nature for their explanations of geological phenomena. In 1830, 1832 and 1833 the three volumes of the first edition of Lyell's *Principles of Geology* were published. This work had an immense influence on contemporary thought not so much because it advanced any fundamentally new ideas but because in it so many known facts of geology were analyzed and correlated. For the first time the science was presented in a thoroughly convincing and rational manner, and only those hypotheses which could withstand critical analysis were approved. It was a complete victory for "uniformitarianism," the principle that processes now in operation on the surface of the globe could and did account for all changes that had taken place in the past. This principle, first suggested by Hutton and Playfair, is basic in all modern attitudes toward earth lore and is one of the corner stones in the evolutionary interpretation of the history of life.

Although Lyell recognized the sequence of progressively higher fossil forms in the strata of successive ages he was not favorably inclined toward the idea of evolution. He criticized severely the doctrines of Lamarck, and for many years after the publication of the *Origin of Species* he withheld approval of Darwin's conclusions. Only as the cumulative evidence impressed his analytical mind were his prejudices overcome, and at last in the tenth edition of the *Principles* he announced his conversion to the doctrine of evolution. His acceptance of this devastating doctrine had great weight with his host of followers and contributed largely toward the settlement of the major scientific and philosophical dispute of the third quarter of the nineteenth century.

KIRTLEY F. MATHER

Important works: *Principles of Geology*, 3 vols. (London 1830–33; 12th ed. in 2 vols., 1875); *The Geological Evidences of the Antiquity of Man* (London 1863, 4th ed. 1873).

Consult: *Life, Letters and Journals of Sir Charles Lyell*, ed. by his sister-in-law, Mrs. Lyell, 2 vols. (London 1881); Bonney, T. G., *Charles Lyell and Modern Geology* (London 1901); Zittel, K. A., *Geschichte der Geologie und Paläontologie* (Munich 1899), tr. by M. M. Ogilvie-Gordon (London 1901); Geikie, A., *The Founders of Geology* (2nd ed. London 1905); "Lyell's 'Principles of Geology' " in *Times Literary Supplement* (1930) 173–74.

LYNCHING and "lynch law" are terms now used chiefly to designate a particular form of mob violence as practised in the United States since the middle of the nineteenth century: a vengeful torture and execution of individuals without trial and regardless of the existence of regular courts of law. In a broader sense lynch law is sometimes employed with reference to any form of extralegal action for inflicting corporal punishment; accordingly American lynching is sometimes likened to such historic forms of private or semiprivate administration of criminal justice as the sixteenth and seventeenth century gibbet, or Halifax, law in England, the mythical Jedburgh justice of Scotland, the *Vehmgericht* of mediaeval Germany and the Spanish *santa hermandad*. The origin of the word lynch is not certain. The most commonly accepted explanation is that it derives from the name of Charles Lynch, a Virginia farmer who at the time of the American Revolution headed a small organization formed to try and punish desperadoes, outlaws and also British sympathizers.

Discussions of lynching often begin with a description of such frontier methods of administering justice in America: extralegal proceedings among the early settlers in dealing with horse thieves, wife beaters, Indian scalpers, harborers of runaway slaves and occasionally public officials accused of an abusive exercise of power; the activities in the third quarter of the eighteenth century of self-constituted standing groups, such as the Regulators in the Carolinas, the Regulars in New York and the Rangers in Pennsylvania, formed to visit speedy punishment upon robbers, brigands and loyalists; and the more systematic work in the middle decades of the nineteenth century of vigilance committees of the west in administering justice against

murderers, stock thieves, gamblers and "suspicious characters" in regions where the spread and increase of population kept ahead of the establishment of civil institutions.

It is only in a limited sense that the later lynchings can be said to be an outgrowth of these frontier practises. Although the latter were doubtless partially responsible for establishing American habits of lawless dealing with certain types of offenders, nevertheless they lacked some of the most significant features of the later lynchings. The earlier attempts to mete out justice extralegally were generally to be found only in regions where the ordinary tribunals were absent or inadequate. They proceeded according to a form of trial of their own, and they inflicted the death penalty only for the graver offenses. Contemporary lynching, on the other hand, is carried on in settled regions where the courts of law are in full operation. There is no process for establishing the guilt of the accused; the punishment is death, often accompanied by torture and other sadistic acts, applied in many instances to persons charged with offenses which according to the ordinary standards of civilization are of a minor character. This extreme form of mob violence is practised in all parts of the United States, but predominantly in the southern and southern border states and most frequently against Negroes.

The racial and sectional aspect of lynching appeared first during the two or three decades immediately preceding the Civil War. The spread of the frontier influence into the older sections and the growing bitterness of the slavery controversy combined to make social conditions at the time especially turbulent. In the south the methods of mob law were applied with increasing frequency and severity against persons charged with any sort of tampering with slavery. There were numerous instances of violent treatment—by flogging, tarring and feathering and occasionally hanging—of abolitionist agitators and persons accused of aiding runaway slaves or otherwise aligning themselves with the anti-slavery cause. After the Civil War southern Negroes became the chief objects of these extralegal proceedings. The original Ku Klux Klan played the chief role in "disciplining" former slaves both by suppressing their night maraudings and by frightening them out of the exercise of legal rights. To some extent the negligence or favoritism of the carpetbag governments in dealing with offenses by Negroes supplied the provocation for such "self-defense" on the part of the whites, a habit which quickly developed into the practise of lynching.

There are no official statistics of lynchings, but the Chicago *Tribune* from 1882 through 1917 and more recently the Tuskegee Normal and Industrial Institute and the National Association for the Advancement of Colored People have presented annual summaries. These summaries do not agree in every numerical detail; with the lack of a precise definition of lynching there may be uncertainty as to whether a particular episode is a case of mob slaying, in alleged behalf of the community, or a case of ordinary murder or manslaughter in which several persons take part. All the summaries, however, exclude the instances of deaths in riots (even race riots) and "gang" slayings; and since in the great majority of cases there is no difference of opinion as to the presence or absence of the characteristic features of a lynching, the several summaries are in approximate agreement.

The summaries show the total number of lynchings from the early 1880's through 1930 to be considerably over 4000. According to a summary revised to 1932 by the *Negro Year Book* issued by the Tuskegee Institute 4589 persons were lynched between 1882 and 1931, 3307 of them Negroes and 1282 whites. Only the six New England states have been free from lynchings during this period. There has been a fairly steady decrease in the annual number of lynchings throughout the country since the beginning of the twentieth century, but the sectional and racial character of the lynchings has become more pronounced. For the country as a whole the average annual number of persons lynched has fallen from 154.1 for the decade of 1890–99 to 31.2 for the decade of 1920–29, so that the number of lynchings in the latter decade is slightly over one fifth the number for the earlier decade. Yet the southern proportion of the total number of lynchings has risen from 87 percent in the decade of 1890–99 to 95.5 percent for 1920–29; and the proportion of Negroes in the total number of persons lynched has risen from slightly over 72 percent in the earlier decade to approximately 90 percent in the latter decade. It is interesting to note further that the largest number of lynchings in the south have not occurred in the regions where the percentage of Negroes in the total population is highest, but in those sections where the Negroes number less than 25 percent of the inhabitants. To explain this fact it is said that in the "black belt" regions the large landowners are to a greater degree de-

pendent upon Negroes as tenants and laborers, while in the more sparsely settled regions, where the proportion of Negroes is lower, the economic competition between the poor white and Negro farmers is keener and the racial hostility between them correspondingly stronger.

A typical lynching crowd appears to be made up of younger men from the relatively poorer and uneducated families. In some instances, however, educated men of high economic and social standing participate, and frequently the lynching is approved or at least condoned by large sections of the better elements of the community. This tolerance appears in many cases to be due to a fear of the dangers—physical, economic, social—that would be incurred by any outspoken condemnation of a practise which is approved by a substantial proportion of the community.

The general causes of lynching are to be found in the frontier heritage of Americans and their pervasive disposition to hold formal law of little account when it runs counter to popular desires and prejudices, as well as in the economic and social situations already noted. The common justification offered in the south for the lynching of Negroes is that prompt, conspicuous punishment freed from the delays and technicalities of formal legal proceedings is necessary in order to protect white women from sex assaults by Negroes. This contention, which is not given much weight outside the south and is coming to be discredited by fair minded southerners, has no statistical substantiation. Concerning the total number of persons lynched from 1889 through 1930 homicide stands first among the offenses charged, covering about a third of the cases; rape stands second, at about one seventh; rape and attempted rape together stand at less than one fourth. In an overwhelming majority of the instances of Negroes lynched the charge is some offense against whites. The graver offenses —murder, rape, arson, assault—predominate; but in many cases the charges are of a strikingly trivial sort, such as slapping a white child, using offensive or boastful language, suing or testifying against a white, expressing sympathy for a lynched Negro, seeking employment in a restaurant or accepting appointment to a postmastership. The lynchings spring in part from an unreasoning fear that the Negro, differing as he does from the whites in certain marked bodily characteristics, is more brutish and that his brutishness is likely to be manifested with peculiar unrestraint against members of a race from which he feels he has suffered indignities. Another cause of lynching is to be found in the quick and passionate resentment among large sections of the southern whites against any gesture of equality on the part of the Negro. These whites hold that their economic and social superiority is insecure unless the Negro is forced to "keep his place." They are determined that he shall remain a servant instead of a competitor. Thus the southern lynchings are manifestations of the same sort of attitude that has led to the other discriminatory measures, legal and extralegal, against the Negro: suffrage disfranchisement, residential segregation, discrimination in the provision of educational facilities and in the processes of trials before the courts. In addition they are manifestations of a mob psychology often distinctly sadistic in character.

A description of lynching as a product of peculiar race relations in the southern states does not, however, explain the social implications of the practise. As violent manifestations of a racial antagonism mixed with economic rivalry the pogroms of czarist Russia and the terrorist activities against Jews in Germany and the states of southern Europe are in a class with lynching. Similarly the conflicts between labor and capital often give rise to what are in essence lynchings. In this connection lynching should be studied in its relation to the violent activities of the "Molly Maguires" among the Pennsylvania anthracite mine workers in the 1870's and among the western miners a few decades later; or, on the other side of the struggle, to the various attempts to cure labor radicalism by violence, as in the personal assaults and the destruction of property directed against the I. W. W. at Everett, Washington, in 1916, and at Centralia in the same state in 1918. In the attack on labor radicals the intellectual and emotional attitudes of a lynching crowd sometimes stand out clearly even when the attack is conducted through the agencies of formal law. In the criminal prosecution of I. W. W. members at Centralia in 1919–20 and of Thomas Mooney in California the groups chiefly instrumental in instigating the prosecutions and forcing the execution of the verdicts ignored the revelations that fraud and perjury played a determining part in securing the guilty verdicts; they displayed the lyncher's indifference to the absence of clear evidence against the suspected offender, the same uneasiness with regard to their own economic security, the same determination to have the group to which the accused belongs taught by the lesson of his extreme

punishment to keep to its proper station in the community.

Condemnations of lynching have in recent years issued increasingly from responsible agencies of opinion, particularly in the south. Appeals and arguments against the practise are made in the resolutions of educational and religious associations, in the editorial columns of leading newspapers and in the messages of governors. Serious studies have been instituted by the Commission on Inter-racial Cooperation, by the Records and Research Department of the Tuskegee Institute, the Commission of Southern Women for the Prevention of Lynchings and the National Association for the Advancement of Colored People. There is a growing realization of the moral and social cost of lynching and of the primary responsibility on the part of southern whites, cooperating with Negroes, to find a remedy for the evil.

Attempts to curb lynching by legislation have taken various forms. In some instances there have been legal prosecutions under the ordinary statutes against homicide, riot and assault. During the last few decades a number of states have enacted statutes aimed specifically at lynchers. The statutes contain such provisions as the following: punishment of individuals who participate in a mobbing or lynching, who break into a jail or take a prisoner from the custody of an officer or who interfere with sheriffs or other officers in the execution of orders of the courts; removal of officers who prove negligent in protecting prisoners; liability of counties in which a lynching occurs for damages to legal representatives of a person lynched; the giving to officers of the law special powers of summoning a posse to protect a prisoner from seizure; the granting the persons injured or the heirs of a person slain in a lynching a special right of action for damages against the participants in the lynching. Although these legal measures have been applied in some instances they appear to be ineffective, particularly in the regions where the remedies are most needed. Here the prosecutors are less likely to institute proceedings against the lynchers, coroners' juries are likely to decide that the victim came to death "at the hands of persons unknown to the jury," grand juries make little effort to discover evidence sufficient to convict and trial juries are unlikely to convict. The recent decrease in the number of lynchings has apparently been due chiefly to the wide public criticism of officials who are lax in their efforts to prevent a lynching. There are, however, no certain indications of a noticeable diminution of the disposition to lynch, among the elements of the population chiefly active in the practise. If the number of persons lynched is added to the number of lynchings prevented by efficient official action the annual totals have remained fairly constant in recent decades. Further legislation has been proposed for increasing the power of the state authorities to investigate and prosecute in cases of death caused in mass attacks, to order changes of venue in the trials of lynchers and to suspend officials who are negligent in protecting prisoners from seizure by a mob. It is often suggested that the remedy for lynching is to be found in more prompt, efficient action on the part of courts and prosecuting officials in dealing with crime, so that the people may feel assured that the tribunals of the law are competent to protect the community from dangerous crimes. But the remedy hardly meets the evil in its most prevalent form, for the negligence of public officials is displayed least in the cases of offenses of Negroes against whites. In many instances moreover persons have been lynched after their prompt conviction by the regular courts. In view of the ineffectiveness of existing state measures and in order to secure the intervention of officials whose tenure of office is relatively independent of local sentiment there have been numerous proposals for federal legislation against lynching. Typical of these is the bill prepared by Representative Dyer of Missouri and introduced in Congress in 1920 and again in 1921. It was passed by the House in 1922, but defeated in the Senate. The Dyer measure provided for fine or imprisonment of officers proved negligent in their efforts to protect prisoners from seizure, fixed a heavy liability in damages on a county in which a lynching occurred and imposed prison sentences on private individuals participating in a lynching. The constitutionality of any such federal legislation is in doubt, inasmuch as control of lynching could hardly be brought within the scope of any of the enumerated powers of Congress. To say that Congress may intervene positively either in punishing state officials who neglect to protect life, liberty and property or in punishing the attacks by private individuals whom the state neglects to punish would require a novel and unusually strained interpretation of the power of Congress to enforce that clause of the Fourteenth Amendment which forbids a state from depriving a person of life, liberty or property without due process of law.

It is generally agreed that all legislative

measures can at best be of only incidental and supplementary effect unless they are accompanied by changes in the racial attitudes, economic conditions and moral standards which give rise to or tolerate lynching and until the practise is outlawed by public opinion. Recent pronouncements against lynching give primary consideration to the problem of elevating generally the social and economic position of the Negro and of improving the relations between Negroes and whites; and they direct attention to the harmful consequences of lynching in debasing the reputation of the United States, particularly the south, in the eyes of the world at large, in brutalizing those who come under the influence of the practise and in promoting a general disrespect for law, order and basic human rights.

FRANCIS W. COKER

See: VIOLENCE; MOB; RACE CONFLICT; NEGRO PROBLEM; KU KLUX KLAN; ANTIRADICALISM; JUSTICE, ADMINISTRATION OF; LAWLESSNESS; FRONTIER.

Consult: Cutler, J. E., *Lynch-law* (New York 1905); White, W. F., *Rope and Faggot* (New York 1929); Southern Commission on the Study of Lynching, *Lynchings and What They Mean* (Atlanta 1931); Dowd, Jerome, *The Negro in American Life* (New York 1926); Reuter, E. B., *The American Race Problem* (New York 1927); Adams, J. T., "Our Lawless Heritage" in *Atlantic Monthly*, vol. cxlii (1928) 732–40; Reilly, L. W., "Lynching: a National Crime" in *Catholic World*, vol. cxxvii (1928) 396–403; Johnson, C. S., *The Negro in American Civilization*, American Social Science series (New York 1930); National Association for the Advancement of Colored People, *Thirty Years of Lynching in the United States, 1889–1918* (New York 1919); *Negro Year Book*, compiled by M. N. Work, published in Tuskegee since 1912.

LYON, MARY (1797–1849), American educator. Mary Lyon was born in rural Massachusetts, where she attended the district schools and began to teach at the age of seventeen. She continued to teach and study alternately, and it was during this period that she acquired the intense religious convictions which made her the most pious of all early American woman educators. In 1828 she and Zilpah P. Grant opened at Ipswich, Massachusetts, a seminary for young women which was to have educational standards equal to those of men's colleges. Her long held ambition to provide a liberal and thorough English education for girls who had neither the money nor the desire to attend the expensive and poorly staffed academies of the day came to fruition when she opened Mount Holyoke Female Seminary under great difficulties in 1837. She never took an interest in the broader problems of women's rights; her aim was to assist young women "who were struggling to gain an education against discouraging odds" and to "prepare young ladies of mature minds for active usefulness, especially to become teachers." Her school was also designed to further religious conversion and to encourage missionary activity. A feature of the consistent principles which she adopted for the seminary and against which there was much opposition was the performance of all the domestic work by the students and teachers during the school's early struggle for permanent existence.

Mary Lyon's remarkable mental power was revealed as student, teacher and administrator; her ideas were carried out with striking success in the school she directed until her death. To the influence of the Mount Holyoke Seminary, later Mount Holyoke College, may be traced the establishment of other institutions for the higher education of women.

EDGAR W. KNIGHT

Works: *Female Education: Tendencies of the Principles Embraced and the System Adopted in the Mount Holyoke Female Seminary* (South Hadley 1839); *A Missionary Offering* (Boston 1843).

Consult: Hitchcock, Edward, *Power of Christian Benevolence Illustrated in the Life and Labors of Mary Lyon* (new ed. New York 1858); Gilchrist, B. B., *Life of Mary Lyon* (Boston 1910); Fiske, Fidelia, *Recollections of Mary Lyon* (Boston 1866); Bradford, Gamaliel, *Portraits of American Women* (Boston 1919) ch. iii; Nutting, M. O., *Historical Sketch of Mount Holyoke Seminary* (Washington 1876); Stow, Sarah D., *History of Mount Holyoke Seminary, South Hadley, Mass., during the First Half Century* (Springfield, Mass. 1887); Howe, M. A. DeWolfe, *Classic Shades: Five Leaders of Learning and Their Colleges* (Boston 1928) ch. ii; *Pioneers of Women's Education in the United States*, ed. by Willystine Goodsell (New York 1931) pt. iii.

MABILLON, JEAN (1632–1707), French ecclesiastic and historian. Mabillon was born in the village of Saint-Pierremont in Champagne, distinguished himself as a scholar at the diocesan seminary and took the monastic vows in 1654. He injured his health by overapplication and was sent for change of air from abbey to abbey, where he was set to unintellectual offices. His unquenchable love of study, which was unmixed with motives of personal ambition and which was never allowed to conflict with his religious duties, was at last given scope when in 1664 he was transferred to Saint-Germain-des-Prés at Paris.

Although the seventeenth and eighteenth centuries were a period of general decadence for French monasticism, yet by reaction they pro-

duced a remarkable group of reformed abbeys, the congregation of Saint-Maur, which has made the name Benedictine proverbial for laborious and disinterested scholarship. Saint-Germain stood at the head of this congregation; with its dependent abbeys it formed a sort of new university at a time when the study of history even on the ecclesiastical side had never yet been taken seriously by any of the older universities. By their editions of the fathers and of mediaeval writers and even more perhaps by their production of aids to study, such as *L'art de vérifier les dates* (Paris 1750; 3rd ed., 3 vols., 1783–87), the immensely expanded edition of Ducange's *Glossarium* (6 vols., Paris 1733–36), the *Gallia christiana* (16 vols., Paris 1739–1877) and the *Histoire littéraire de la France* (vols. i–xxxvi, Paris 1733–1927), they laid foundations for the study of church history and of mediaeval history in general which remain firm to the present day. Even Mabillon's stupendous industry and wonderful memory and judgment could not have carried him through the works which stand in his name without much collaboration with his juniors, as he himself had collaborated with his contemporary Luc d'Achery. His *De re diplomatica* (Paris 1681, and supplement 1704) is not only a work of great extent but it also laid for all time secure foundations for the accurate testing and the study of mediaeval charters and similar documents. His *Acta sanctorum ordinis S. Benedicti* runs to nine folio volumes (Paris 1668–1701), his *Annales ordinis S. Benedicti* to six (Paris 1703–39); in each case the last volume was completed and brought out by a colleague after his death. Brief but equally masterly is his *Traité des études monastiques* (Paris 1691). His little book on the worship of unknown saints (*Eusebii romani . . . epistola de cultu sanctorum ignotorum*, Paris 1698; tr. into French, 1698) was condemned at Rome for its freedom of criticism and tolerated only in a second softer edition which appeared in 1705 (French translation, 1705). Mabillon stands unapproached at the head of all monastic historians.

G. G. COULTON

Consult: Broglie, E. de, *Mabillon et la société de l'abbaye de Saint-Germain-des-Prés*, 2 vols. (Paris 1888); Bäumer, S., *Johannes Mabillon* (Augsburg 1892); Bergkamp, J. U., *Dom Jean Mabillon and the Benedictine Historical School of Saint-Maur* (Washington 1928); Johnson, Allen, *The Historian and Historical Evidence* (New York 1926); Sellin, T., "Dom Jean Mabillon—a Prison Reformer of the Seventeenth Century" in American Institute of Criminal Law and Criminology, *Journal*, vol. xvii (1926–27) 581–602.

MABLY, ABBÉ GABRIEL BONNOT DE (1709–85), French historian, moralist and political philosopher. Mably's secretaryship at court between 1741 and 1748 gave him an insight into affairs of state and intensified his moralistic aversion to political corruption and to luxury. After the appearance of his *Droit public de l'Europe* (2 vols., 1746), which was based upon a digest of available international treaties from 1648 to 1748 and which became a standard work throughout Europe, he was ranked with Grotius and Pufendorf as an authority in international relations. In his retirement he then began to produce a number of works, most of which were oriented about the purpose of ameliorating the contemporary evils of France but which carried him into widely ramified branches of social and political philosophy. While Rousseau's claim to have influenced him cannot be substantiated, his works plainly reveal his intimate acquaintance with the thought of Plato, Cicero, Locke and his brother Condillac. He was firmly convinced that psychology, ethics and politics were all different aspects of natural law; and the first dictate of natural law, according to his rather arbitrary assumption, was equality. Denying the validity of the social contract he deduced from his belief that men were equal in their fundamental make up the premise that they should also be equal in society; he further insisted that political and legal equality had no meaning without an approximation to economic equality. Mably cannot, however, be classed as a communist, although he is frequently so regarded and although he actually inspired Babeuf. He believed communism to be the ideal system and posited the possibility that it had existed in the primitive state of man. But a quality of realism and an inclination toward the evolutionary standpoint prevented him from espousing any political system which failed to take full account of human nature and of the peculiar history and customs of the peoples concerned. In the masses, whom he considered corrupted by centuries of poverty and unnatural environmental conditions, he had no faith; when he came to make practical proposals, he tended to be moderate. Through certain aspects of his thinking, such as his humanitarianism, his conviction that private property was the root of all social troubles and his reiterated principle that property was not a right but a state given privilege and might justly be restricted, he has points of contact with modern socialism. He did not, however, understand the implications of state ownership. Sump-

tuary and agrarian legislation, the restriction of industry and commerce, and inheritance laws were some of the devices which he recommended as means to bring about a more equitable distribution of property. He also advocated the dissemination of education and the establishment of a more humane legal code. In his consideration of actual political reforms he showed himself something of a prophet; thus in his sketch of a new constitution of France to establish what he called a *monarchie républicaine* he sounded warnings of possible dangers which appear valid even today, and in his *Des droits et des devoirs du citoyen*, written as early as 1758, he predicted the revolution and its stages with a remarkable prescience of the still distant events. His *De la législation* (1776), a work of practical political insight, was not without effect in concentrating public attention on the calling of the Estates General. While his general importance in the formation of revolutionary opinion cannot be accurately estimated, it is certain that he was in his own time classed with Rousseau and that his opinions were frequently solicited both before and after the revolution. Robespierre went to him for inspiration. He analyzed several constitutions; in 1770 he accepted an invitation to frame a constitution for Poland. Mably also gave much attention to history, his attitude toward which plainly reveals his leaning toward moral didacticism; in the eighteenth century his *Observations sur l'histoire de France* (2 vols., 1765) was a standard work.

ERNEST A. WHITFIELD

Other works: *Entretien de Phocion, sur le rapport de la morale avec la politique* (1763), English translation ed. by W. Macbean (London 1769). Mably's complete works have been edited by G. Arnoux, 15 vols. (Paris 1794–95).

Consult: Whitfield, E. A., *Gabriel Bonnot de Mably*, London School of Economics and Political Science, Studies, no. 104 (London 1930); Driver, C. K., "Morelly and Mably" in *Social and Political Ideas of Some Great French Thinkers of the Age of Reason*, ed. by F. J. C. Hearnshaw (London 1930) ch. ix; Girsberger, H., *Der utopische Sozialismus des 18. Jahrhunderts in Frankreich*, Züricher volkswirtschaftliche Forschungen, vol. i (Zurich 1924) p. 158–78; Sée, H., *Les idées politiques en France au XVIII^e siècle* (Paris 1920); Martin, Kingsley, *French Liberal Thought in the Eighteenth Century* (London 1929) p. 242–50.

MABUCHI, KAMO (1697–1769), Japanese historian and language reformer. Mabuchi was the son of a Shinto subpriest of a small shrine in the province of Totomi. He first studied Confucianism but in 1733 he came to Kyoto and became a disciple of Azumamo Kada (1669–1736), the founder of the new movement for the study of the Japanese classics. He succeeded to the master's mantle as the leader of the new movement and in 1738 came to Yedo (Tokyo), where he established a school and attracted many disciples.

Mabuchi with Motoori and Hirata represents that group of Japanese scholars who inaugurated the renaissance of the ancient Japanese language and culture and freed Japanese civilization from its domination by Chinese and Hindu influences. Mabuchi urged the study of the old *Manyōshiu* and *Kojiki* and attacked the current view that these were only "for the amusement of women." He sought to find in these ancient writings the essential ideals of Japanese religion and morals. The Chinese philosophy, he maintained, was responsible for the continual state of civil war in China and was for this reason to be cast aside. The introduction of Chinese morals and luxuries into Japan also led to the widening of the gulf between the emperor and the people. Mabuchi emphasized the reverence and obedience owed the former by the latter, although he did not carry the point to its logical conclusion by placing the emperor above the Tokugawa shogunate. The movement which he inaugurated, however, later developed along its logical line and culminated in the creation of new loyalty to the emperor and in a strong nationalism born of the consciousness of the unique culture and life of the Japanese race.

YUSUKÉ TSURUMI

Consult: Satow, E. M., "The Revival of Pure Shinto" in Asiatic Society of Japan, *Transactions*, vol. iii (1875) appendix, p. 10–17.

MCADAM, JOHN LOUDON (1756–1836), British road builder. Although not an engineer McAdam did more than any other man of his time to make highway traffic quick, comfortable and safe from accidents as well as less destructive of draft animals. As a local road trustee and against prejudice and opposition he began road making experiments at his own expense, of which over £5000 was later repaid him by the government. At that time British roads were for the most part mere tracks often worn into ditches and unusable in bad weather. McAdam perfected a process of road making since known as "macadamizing," the essential feature of which is the use of uniformly small broken stone, which is rolled in successive thin layers so that it consolidates by its own angles, without binding

material, into a smooth, impenetrable surface. In addition he carried on an extensive campaign for better roads in the interest of commerce and advocated combining the hundreds of hostile parish road trusts into unified authorities headed by a higher type of road commissioner. He was constantly consulted by local bodies and in 1816 was placed in charge of the turnpikes around Bristol. Parliamentary inquiries in 1819 and 1823 served to spread his views, and his appointment in 1827 as surveyor general of roads for Great Britain put his methods and ideas into general practise. In the construction of roads McAdam commonly hired unemployed workers in the parishes, using women and children for breaking stone; pauper labor he opposed on the ground that paupers of long standing could or would do very little. He wrote two books to promote his ideas, *Practical Essay on the Scientific Repair and Preservation of Public Roads* (London 1819) and *Remarks on the Present System of Road Making* (Bristol 1816, 9th ed. London 1827). To McAdam's efforts was mainly due the development of the fine network of mail coach ways which met the needs of expanding industry and commerce in the early days of the factory system and contributed greatly to England's rapid economic advance before the era of the railways.

SOLON DE LEON

Consult: Salkield, T., in East Herts Archeological Society, *Transactions*, vol. i (1899–1901) 305–16.

MACANAZ, MELCHOR RAFAEL DE (1670–1760), Spanish statesman and jurist. Macanaz, who was born in the province of Albacete of a family of the lower nobility, studied law at Salamanca and became a practitioner. On the death of Charles II he aligned himself with the Bourbon party, and his whole subsequent career was devoted to the pursuit of a political ideal identified with the historic role of the Bourbon dynasty in Spain. To this ideal he dedicated all his energies as well as his literary works of erudition and jurisprudence. When Philip of Anjou, grandson of Louis XIV, ascended the Spanish throne, Macanaz concentrated upon the task of adapting to Spain the centralized system of government existing in France. The politico-administrative privileges in the regions then enjoying autonomy were suppressed, the more important being abolished entirely and those of secondary significance being reduced in scope to the mere preservation of institutions of civil law and the like. A new method of government and administration of justice was introduced in Valencia, Aragon and Catalonia, Navarre alone being spared this political assimilation in return for the loyalty with which it served Philip V in the War of the Spanish Succession. Macanaz also prepared a project to reduce the Court of Inquisition to an instrument whose activities should all be initiated and controlled by the king; and he advocated a policy regarding relations with the Vatican, known as regalism, which would lead to strong civil intervention in the affairs of the church. He failed for the most part in the last two undertakings, and the influence of his enemies was sufficiently strong to secure his retirement from public affairs.

ROMÁN RIAZA

Consult: Maldonado Macanaz, J., "Noticia de la vida y escritos de Melchor Rafael de Macanaz" in Macanaz, Melchor Rafael de, *Regalías de los Señores Reyes de Aragón*, Biblioteca Jurídica de Autores Españoles, vol. i (Madrid 1879); Gomez de Baquero, E., "Melchor Rafael de Macanaz" in R. Academia de Jurisprudencia y Legislación, Madrid, *Jurisconsultos españoles*, vol. ii (Madrid 1911) p. 97–109; Menéndez y Pelayo, Marcelino, *Historia de los heterodoxos españoles*, 3 vols. (2nd ed. Madrid 1880–81) vol. iii, p. 45–54.

MACARTHUR, JOHN (1767–1834), Australian agriculturist and pastoralist. Macarthur went to Australia as an ensign in the New South Wales Corps in 1790 and was granted land at Parramatta in 1793. He took a prominent part in the political affairs of the colony, frequently in conflict with the authorities; but more important was his contribution to the economic development of Australia. Macarthur realized that Great Britain would not continue forever to subsidize New South Wales, and certain breeding experiments led him to conclude that fine wool might provide an article of export which would give the colony a means of self-support. If grown on free or cheap land it would bear the small expense of convict labor, and it would incur low freight charges as back loading on returning transports which at that time went empty to China to load cargoes of tea. Australian wool could thus replace diminishing Spanish supplies on British looms. To develop the right wool bearing sheep Macarthur obtained merinos, first of the Escorial type introduced from Cape Colony, and later of the Negretti type from the royal stud at Kew in England. The results of his breeding activities won full recognition by 1822, when he was awarded two gold medals for having exported to Britain "fine wool equal to the best Saxon merino." This meant that Australian

wool could reach a standard well above that of "the best piles of Old Spain." The full fruit of his activity came when a way was discovered over the Blue Mountains in 1814 and it was found that merino sheep would thrive in the vast inland plains thus opened for settlement. The export of wool was greatly favored by the removal of British protective duties on colonial wool in 1825. In turn cheaper raw materials strengthened the export of British woolen manufactures. There was an influx of capital into Australia and a rush of settlers to obtain land for sheep runs. "Assigned" convicts herded the sheep. Macarthur's foresight thus resulted in the foundation of the wool industry, which remains the principal support of Australian economy. It transformed Australia from what was essentially a number of penal colonies to an important factor in the economy of the British Empire and it paved the way for the long dominance of the pastoral interests in Australian political life.

E. O. G. SHANN

Consult: *Some Early Records of the Macarthurs of Camden*, ed. by Sibella Macarthur Onslow (Sydney 1914); Coghlan, T. A., *Labour and Industry in Australia*, 4 vols. (London 1918) vol. i, pt. i, ch. vii; Shann, E. O. G., *An Economic History of Australia* (Cambridge, Eng. 1930) p. 41–47 and ch. vi.

MACARTHUR, MARY REID (1880–1921), British labor leader. Mary Macarthur's career epitomizes the history of the woman movement from the beginning of the twentieth century to the post-war period, as she was in the forefront of its industrial and political battles and had a large share in shaping its policies. Although she was the daughter of a well to do merchant she became interested in the labor movement at an early age through the Shop Assistants' Union in Glasgow. Her enthusiasm amounted almost to a religious fervor, and while she was still only twenty-three she was made secretary of the Women's Trade Union League in London. At that time women's labor was very ill paid, working conditions were often appalling and except in the cotton industry little had been achieved in organization, women being frequently excluded from the existing unions. Mary Macarthur was opposed to a permanent separation of men's and women's organizations, but she met the immediate necessity of holding together scattered and poverty stricken groups of women workers and giving them some bargaining strength by working toward the formation in 1906 of the National Federation of Women Workers, a general union open to all women in unorganized trades or not admitted to their appropriate unions. In the following years she effectually used the new federation in the struggle to establish trade boards to set minimum wages in the sweated trades and in the great strikes to enforce the Trades Board Act of 1909 and later to extend its scope. The federation helped also to secure for women the full benefits of the National Insurance Act of 1911 by becoming an approved society for its administration.

When war broke out in 1914 the growing importance of the women's labor movement was recognized by the appointment of Mary Macarthur as secretary of the semi-official committee of women of all classes and all parties formed to deal with the serious problem of unemployment. When this gave way to the problem of replacement of men by women, she served on the Labour Supply Committee of the Ministry of Munitions, where she fought for equal pay for equal work and backed the men's demand for restoration of trade union conditions, at the same time fostering an extensive organization campaign of the N. F. W. W. In 1918 Mary Macarthur represented the new political status of women by standing for Parliament as a Labour candidate. The following year she accompanied the British delegation to the International Labor Conference in Washington, D. C., and took an active part in the drafting of the convention on the employment of women before and after childbirth. Later she effected the amalgamation of the N. F. W. W. with the National Union of General Workers and planned that the remaining functions of the Women's Trade Union League be handed over to a women's section of the new General Council of the Trades Union Congress, thus completing the recognition of women's place in the regular labor movement.

GLADYS BOONE

Consult: Hamilton, Mary A., *Mary Macarthur, a Biographical Sketch* (London 1925); Drake, Barbara, *Women in Trade Unions*, Labour Research Department, Trade Union series, no. 6 (London 1920).

MACAULAY, FIRST BARON, THOMAS BABINGTON MACAULAY (1800–59), English historian. A faithful Whig in Parliament, an able civil servant in India, a remarkable orator although never a ready debater, an efficient cabinet minister, Macaulay is important chiefly as a writer of history. In his articles in the *Edinburgh Review*

(for example, that on Clive, on Warren Hastings, on Hallam's *Constitutional History*, on Ranke's *History of the Popes*) he virtually invented the historical essay, in which the subject is but a starting point for a condensed, vivid narrative or description centered on a limited topic. From 1825 to about 1840 these essays were Macaulay's main literary effort and they gave the *Edinburgh Review* new life. Thereafter until his death he devoted himself to his great *History of England*, which, planned to extend from 1685 to about 1820, was actually published in five volumes (1848–61), extending to 1702. The *Essays* and the *History* sold in the author's lifetime like popular fiction and still have a steady sale. His continued popularity depends more on his ability to tell a story than on the now outmoded splendor of his style. In critical use of sources, in professional technique generally, his standards were high.

Although Macaulay was more than an annalist and his famous chapter on England in 1685 is genuine social history he lacked the critical and synthetic interests of the modern sociological historian. He had indeed no capacity for philosophical generalization and never attempted scientific generalizations. The *History* is a unity, not merely because its author was an artist but also because he was a Whig. For him the Revolution of 1688 was an unmitigated good fortune such as only a sturdily virtuous, clean, strong and unthinking people like the English could have deserved. Although generally fair he could turn on enemies of these Whig values and sometimes on enemies of other, more humane values in a genuine, almost intellectual passion and be notably unfair—as he was to Bacon, to Marlborough and to Impey.

Macaulay may have increased professional historical interest in English social history; otherwise his influence on academic historians, with such a notable exception as the Trevelyan family itself, has been largely negative. Shocked alike by his popularity and his rhetoric, they have withdrawn to the composition of graceless monographs. Macaulay was the last great English historian to whom history was an unsullied art, who wrote of England recognizably as had Homer of Troy. On laymen he has exerted a great influence through his part in building up the mythical, symbolic side of English nationalism.

Macaulay and his writings form in a hundred ways an excellent source for the historian of nineteenth century opinion; when he contrasts the small and unprogressive England of 1685 with the great and growing England of the industrial revolution, he is that rare person, the articulate man in the street. His most important official action was an expression of the same mind: his minute on education written in 1835 when he was on the Supreme Council of the governor general of India poured a shower of contempt on Indian thought and literature and was instrumental in crystallizing the government's educational aims as to the Europeanization of the natives, linguistically and otherwise.

CRANE BRINTON

Works: *The Works of Lord Macaulay Complete*, ed. by Lady Trevelyan, 12 vols. (new ed. London 1898).

Consult: Trevelyan, G. O., *Life and Letters of Lord Macaulay*, 2 vols. (new ed. New York 1908); Roberts, S. C., *An Eighteenth-century Gentleman and Other Essays* (Cambridge, Eng. 1930) ch. iii; Strachey, Lytton, *Portraits in Miniature* (London 1931) p. 169–80; Fisher, H. A. L., "The Whig Historians" in British Academy, *Proceedings*, vol. xiv (1928) 297–339; Gooch, G. P., *History and Historians in the Nineteenth Century* (London 1913) p. 294–307; Stephen, Leslie, *Hours in a Library*, 4 vols. (new ed. London 1905–07) vol. iii, p. 227–71.

McCORMICK, CYRUS HALL (1809–84), American inventor, manufacturer and philanthropist. McCormick was the son of a Virginia farmer and had little schooling. In 1831 he invented the first practical reaper. In 1847 he moved to Chicago, where he established a factory, dispensing with submanufacturers; thenceforward either alone or in partnership with his two brothers he outdistanced all competitors, and by 1884 was selling over 50,000 machines a year. His wealth was largely derived from investments in manufacturing, railroads and Chicago real estate rather than from his various patents.

During his lifetime many inventors contributed to the evolution of his original invention from a self-rake reaper to an automatic twine binder. These and other new agricultural implements played a large role in the rapid increase of grain production after 1850. McCormick adopted characteristic methods of modern mass production even before the Civil War: raw materials were processed according to an ordered factory schedule through the use of belt conveyors; output was standardized and any purchaser could buy parts for replacement. His efficient and world wide agency system, his large scale advertising policy, his absolute guaranty of satisfaction to the purchaser and his long term credit plan, enabling farmers to pay for a

machine from profits gained by its use, were uncommon in their day.

After 1860 competition between makers of harvesting machinery greatly increased, reaching a climax about 1878 in the "binder war," in which a dozen large manufacturers were involved. The McCormick-Deering rivalry was the most acute. The course of the struggle was marked by patent lawsuits, patent and twine pools, rebates from railroads, the breaking of price fixing agreements, and ruthless sales methods. In 1902 after several abortive attempts to consolidate the McCormick, Deering and three other firms combined with the aid of the house of Morgan to form the International Harvester Company, capitalized at $120,000,000 and in control of the industry.

McCormick was influential in Democratic politics and liberally aided Presbyterian seminaries and colleges in Illinois and Virginia.

WILLIAM T. HUTCHINSON

Consult: Hutchinson, William T., *Cyrus Hall McCormick* (New York 1930); McCormick, Cyrus, *The Century of the Reaper* (Boston 1931).

McCULLOCH, JOHN RAMSAY (1789–1864), British economist. McCulloch, a Scot by birth, studied law but found in economics a less dismal career. In 1818 he began his two years' editorship of the *Scotsman* and his twenty years' collaboration in the *Edinburgh Review*. Going to London in 1820 he made intimate contacts with the reigning school of classical economists. In 1828 he was made professor of political economy in the newly established University of London but resigned the privileges of the unendowed chair in 1832. From 1838 until his death he was comptroller of the stationery office.

McCulloch's place in the development of classical economics is definitely that of a disseminator. An encyclopaedic compiler and historian of economic development and thought, he produced three statistical and descriptive surveys of the past and present resources, industries and institutions of important countries. He also delved into the history of commerce, maritime law, money, interest and property in land. Besides numerous collections and editions of English economic tracts and a classified catalogue of the literature of political economy he has left sketches of the life and writings of Quesnay, Smith and Ricardo and editions of the *Wealth of Nations* (1828) and Ricardo's *Principles* (1846). In editing the former he endeavored "to make the reader aware of the fallacy or insufficiency of the theories which Dr. Smith has sometimes adopted"; but the principles expounded by Ricardo, whose confidence he enjoyed more than any other man with the possible exception of James Mill, he accepted with little attempt at amendment. McCulloch's *Principles of Political Economy* (Edinburgh 1825, 5th ed. 1864), one of the most widely used manuals prior to the publication of John Stuart Mill's *Principles*, was essentially a reproduction of the orthodox ideas. On only one or two points is he to be credited with doctrinal contribution. He was practically alone among the classical economists in calling attention to the importance of consumption and clarified the Ricardian conception of capital, defining it as accumulated labor and thus dignifying the payment of interest into a payment for work. Labor, on the other hand, he declared to be a species of capital. Careless passages of similar import inflamed the labor writers of the time, while they illustrated the utility of economic science for the governing classes.

McCulloch is of historical interest as a captain in the ranks of the economists who played an important part in making England a free trade country and as an adherent of the wages fund doctrine in perhaps its most uncompromising form. Unlike many of the other secondary economists, however, he regarded the doctrine not as an antidote to unionism but as the keynote to the improvement of the laborer's condition. He favored unionism as the natural counterpart, in a competitive society, of capitalistic companies and combinations, its effect being to assure the workers the wages to which competitive conditions entitled them. On nearly every important contemporary issue McCulloch leaped into print, presenting what we would now consider the orthodox classical views, although in later years he seems to have moved with the tide and to have approved of a measure of social control. For a time he lent his influence to Francis Place's propaganda for birth control but withdrew when challenged by the respectable elements. At a time when economics was probably at the height of its prestige he was one of its shining lights. But he has not left his mark upon the science, and it is probable that his reputation will depend increasingly upon his work as one of its early historians and upon his statistical and historical compilations.

GUSTAV PECK

Other important works: *The Literature of Political Economy* (London 1845); *A Dictionary . . . of Commerce and Commercial Navigation* (London 1832; new

ed. by H. G. Reid, 1869, with supplement 1871); *A Dictionary . . . of the Various Countries, Places and Principal Natural Objects in the World*, 2 vols. (London 1841; new ed. by F. Martin, 4 vols., 1866); *A Descriptive and Statistical Account of the British Empire* (London 1837; 4th ed., 2 vols., 1854); *An Essay on the Circumstances Which Determine the Rate of Wages* (Edinburgh 1826, new ed. 1868). His correspondence with Ricardo has been collected in *Letters of David Ricardo to John Ramsay McCulloch 1816–1823*, ed. by J. H. Hollander, American Economic Association Publications, vol. x, nos. 5–6 (New York 1895), and *Letters of John Ramsay McCulloch to David Ricardo 1818–1823*, ed. by J. H. Hollander (Baltimore 1931).

Consult: Cannan, Edwin, *A History of the Theories of Production and Distribution in English Political Economy from 1776 to 1848* (2nd ed. London 1903); Halévy, É., *La formation du radicalisme philosophique*, 2 vols. (Paris 1901), tr. by Mary Morris (London 1928) p. 342–72.

MACDONALD, ALEXANDER (1821–81), British labor leader. Macdonald was more responsible than any other man both for building up national trade union organization among the miners and for securing them legislative protection. He began to work in a coal mine at the age of eight, entered Glasgow University at twenty-five, became a mine manager, achieved financial independence through speculation and retired in 1855 to devote himself to the miners' interests. He organized the Scottish miners, largely through demands for abolition of payment of wages in truck, and stimulated reformation of the county unions in the north of England which had recently broken up after the collapse of the earlier national union. Macdonald also advocated legislation to improve health and safety in the mines, including demands for employers' liability, and to protect the miners' wages against deductions by dishonest weighing of their output. This led to the Mines Regulation and Inspection Act of 1860 and later amending acts, under which the miners secured the right to appoint their own checkweighman.

In 1863 Macdonald organized a Miners' National Union, of which he was president until his death. It grew greatly and was chiefly responsible for securing the passage of the Coal Mines Regulation Act of 1872, the foundation of modern British mining legislation. Meanwhile in conjunction with Alexander Campbell of the Glasgow Trades Council Macdonald had begun an agitation against the Master and Servant Law, under which hundreds of miners were sent to prison for breach of contract every year and which was drastically amended as a result of the agitation. As part of this campaign the first national Trade Union Congress met at Glasgow in 1864; out of this arose the permanent Trades Union Congress. He played a leading part also in the struggle for legal recognition of trade unions and in the political reform movement which led up to the enfranchisement of the urban workers in 1867. Macdonald was chairman of the Trades Union Congress Parliamentary Committee in 1872–73 and an active member of the Labour Representation League; in 1874 he was elected member of Parliament for Stafford, retaining the seat with Liberal support until his death.

Macdonald believed in parliamentary rather than industrial action, in conciliation and arbitration rather than strikes, and was opposed to the creation of a centralized miners' industrial union. This led to a split in 1869, when nearly half the organized miners joined the Amalgamated Association of Miners, led by Thomas Halliday, which advocated an energetic strike policy. This body collapsed in the great depression of the later 1870's; the depression also seriously weakened the National Miners' Union, which fell to pieces after Macdonald's death. National organization was started afresh by the Miners' Federation of Great Britain in 1888. Macdonald's policy, however, continued to influence the British miners, who still lay great stress on social legislation and direct representation in Parliament, although they have broken with the Macdonald tradition in their militant strike policy.

G. D. H. COLE

Consult: Cole, G. D. H., *A Short History of the British Working Class Movement, 1789–1925*, 3 vols. (London 1925–27) vol. ii; Webb, Sidney and Beatrice, *The History of Trade Unionism* (rev. ed. London 1920); Johnston, Thomas, *The History of the Working Classes in Scotland* (Glasgow 1920); Baernreither, J. M., *English Associations of Working Men* (London 1889).

MACDONALD, SIR JOHN ALEXANDER (1815–91), Canadian statesman. Macdonald was born in Glasgow and was brought to Canada in 1820. He was called to the bar in 1836 and in 1844 he was elected to represent Kingston in the Legislative Assembly of Canada. In 1854 he was largely instrumental in bringing about the coalition of factions resulting in the creation of the Liberal-Conservative party, which remains one of Canada's major political parties. He took the leading part in bringing about in 1867 the confederation of Nova Scotia, New Brunswick and Upper and Lower Canada, and it was upon his initiative that the dominion was

extended by 1873 to include the Hudson's Bay Company's territories, British Columbia and Prince Edward Island, thus covering the entire northern part of the continent from ocean to ocean. He was himself in favor of a strong legislative union, and the element of strong central control in the federal constitution owes much to his influence. He was the first prime minister of the new Dominion of Canada and continued to fill this office until his death, except for the interval from 1873 to 1878. His defeat in 1873 was the result of charges of political corruption in connection with the charter for the building of the Canadian Pacific Railway, and it was thought that his eclipse on this occasion would be permanent. But in 1878 he came back to power on the "national policy" of high protection, a program which Canada has followed without radical changes from that day to this. During the remaining years of his life he proved invincible at the polls.

Macdonald had not in some respects an ideal code of political ethics. Although there were some points on which he knew no compromise, such as the preservation of law and order and the continuance of the British connection, in general he raised opportunism almost to the level of a political principle. It may, however, be doubted whether in the state of political morality then prevailing in Canada a statesman of stricter views could have guided the new nation more successfully than he did. He was a past master in the art of managing men, and in many ways the Dominion of Canada today is the creature of his statesmanship.

W. S. WALLACE

Consult: *Memoirs of the Right Honourable Sir John Alex Macdonald* (rev. ed. by J. Pope, Toronto 1930); *Correspondence of Sir John Macdonald*, ed. by J. Pope (Toronto 1921); Pope, J., *The Day of Sir John Macdonald*, Chronicles of Canada series, vol. xxix (Toronto 1915); MacDermot, T. W. L., "John A. Macdonald—His Biographies and Biographers" in Canadian Historical Association, *Report* of the Annual Meeting held at Ottawa May 26 and 27, 1931 (Ottawa 1931) p. 77–84; Macpherson, J. P., *Life of the Right Honourable Sir John A. Macdonald*, 2 vols. (St. John, N. B. 1891); Parkin, George R., *Sir John A. Macdonald*, Makers of Canada series, vol. xviii (Toronto 1908); Wallace, W. S., *Sir John Macdonald*, Canadian Statesmen, no. 1 (Toronto 1924); Trotter, R. G., *Canadian Federation* (Toronto 1924); Cartwright, Richard, *Reminiscences* (Toronto 1912), and a rejoinder by Pope, J., *Sir John A. Macdonald Vindicated* (Toronto 1912); Smith, G., *Reminiscences*, ed. by A. Haultain (New York 1910); Dent, J. C., *The Last Forty Years*, 2 vols. (Toronto 1881); Willison, J. S., *Sir Wilfrid Laurier and the Liberal Party*, Makers of Canada series, vol. xi (new ed. Toronto 1926).

McDUFFIE, GEORGE (*c.* 1788–1851), American political leader. Although a native of Georgia McDuffie passed most of his adult life in the public service of South Carolina, serving as member of the state legislature from 1818 to 1820, as member of Congress from 1821 to 1834, as governor from 1834 to 1836 and as senator from 1842 to 1846. Like other statesmen of his group he began as a loose constructionist, but when in the period following 1820 the divergent economic development between north and south became marked he joined the strict constructionists. He denounced the "American System" as presumptuous in name, fallacious in principle and repugnant to the constitution. He opposed federal activity in internal improvements, except where military or postal needs were clearly served. His chief claim to distinction rests upon the relentless course he pursued in opposing the aggressive protective policy of the majority. His views on the tariff are best set forth in his speeches of 1824, 1830 and 1832 and in the report of the Ways and Means Committee on the tariff bill of 1828 (United States, Congress, *American State Papers*, Finance, vol. v, 1859, p. 944–58). Ignoring the most obvious cause of agricultural distress in the southern seaboard states—the opening of new cotton producing areas in the southwest—McDuffie became the chief spokesman of those who found sufficient explanation of the depression in the burden imposed by the protective system. This burden was the more galling because it was believed to be in defiance of the constitution. Starting with the doctrine that imports are paid for by exports he arrived at the conclusion that a tax on imports was virtually a tax on exports and that these, consisting in the main of cotton, tobacco and rice, bore the burden of taxes levied to promote manufactures. His "export tax" theory, set forth with great ingenuity and eloquence, gained wide acceptance in his state. He was one of the boldest advocates of nullification, not as a constitutional but as a revolutionary right. He had no constitutional scruples about the second bank and broke with his party chief on that issue by acting with the bank party. He was a stanch defender of slavery as a beneficent patriarchal institution, more humane than the wage system as it was developing under factory conditions (Message of 1835, abridged in *American History Leaflets*, no. 10, 1893). No collection of McDuffie's writings has been made and no adequate biography of him has been written.

GEORGE O. VIRTUE

MACEDONIAN PROBLEMS. *See* COMITADJI; NEAR EASTERN PROBLEM.

McGEE, THOMAS D'ARCY (1825–68), Canadian statesman and publicist. As a youth McGee emigrated from his native Ireland to the United States, where he engaged in journalism. He returned to Ireland in 1845, became associated with the Young Ireland group and shared their intensely idealistic nationalism. In 1848 he participated actively in a futile insurrection and then fled as a fugitive to the United States.

During the next nine years in newspapers which he edited successively in New York, Boston and Buffalo he defended the interests of the Irish immigrants against the attacks of the Know-Nothings. When he moved to Montreal in 1857 he found the cause that was to absorb his energies throughout the rest of his life—the establishment of a united British North America—and started the *New Era*, the first newspaper in the colonies dedicated to this purpose. Within its columns he emphasized the broad spiritual benefits of nationalism as the Young Irelanders had done and drew an inspiring picture of a new British nation, sharing with the United States the life of the continent, which would result from union. He carried on his crusade in the Canadian legislature first as a member of the Reform and later of the Conservative party. The outbreak of the American Civil War gave him added arguments, since an unfriendly North placed the disunited colonies in peril. To the Maritime Provinces he pointed out the economic benefits that they would reap by joining hands with the Canadas in building a new nation. Thus by ceaseless advocacy in eloquent addresses and writings he helped perhaps more than any other individual to create the psychological basis for Canadian federation. McGee's influence survived his death at the hands of an assassin. His championship of Canadian nationalism was the acknowledged inspiration of the "Canada first" group, which played an important part in chalking out lines of political and economic development for the dominion.

ALEXANDER BRADY

Important works: *Federal Governments Past and Present* (Montreal 1865); *Speeches and Addresses Chiefly on the Subject of British-American Union* (London 1865); *A History of the Irish Settlers in North America* (Boston 1851; 5th ed. 1852); *The Catholic History of North America from the Earliest Period to the Census of 1850* (Boston 1852); *Irish Position in British and in Republican North America* (Montreal 1866, 2nd ed. 1866); *A Popular History of Ireland from the Earliest Period to the Emancipation of the Catholics* (New York 1863); *A History of the Attempts to Establish the Protestant Reformation in Ireland* (Boston 1853); *Gallery of Irish Writers. The Irish Writers of the 17th Century* (Dublin 1846); *Historical Sketches of O'Connell and His Friends* (Boston 1845; 4th ed. 1854); *Life of Edward Maginn, Coadjutor Bishop of Derry* (New York 1857).

Consult: Skelton, Isabel, *Life of Thomas D'Arcy MacGee* (Gardinvale, Canada 1925); Brady, Alexander, *Thomas D'Arcy McGee* (Toronto 1925).

McGEE, WILLIAM JOHN (1853–1912), American anthropologist and geologist. McGee was associated with the United States Geological Survey for ten years beginning in 1882; the next ten years he spent in the Bureau of American Ethnology and the remainder of his life in research in geology and conservation. His contributions to geology were conspicuous through his geological maps of the United States, which were standard for many years. He helped to lay the scientific foundations for the conservation movement, and his researches relating to potable waters of the United States were classic contributions to the solution of the pressing problems of urban water supply. The ultimate objective motivating these studies was the good of mankind; he carried this ideal over into anthropology, which he believed should above all concern itself with contemporary life. He visualized in advance of his time the development of a bureau for research devoted to the conservation of national life and advocated the detailed study of primitive peoples as an essential part of this program rather than as an end in itself. In anthropology his most original contributions were his field study of the Seri Indians ("Seri Indians" in United States, Bureau of American Ethnology, *Seventeenth Annual Report, 1895–96*, Washington 1898, pt. i, p. 9–344) and his observations upon desert environments; in the latter he presented concisely the interrelations of plant and animal life as constituting a kind of community and then observed man in this setting. McGee anticipated human ecology, as is seen in his best known papers on environment, the "Beginning of Agriculture" and "Beginning of Zooculture" (in *American Anthropologist*, vol. viii, 1895, p. 350–75, and vol. x, 1897, p. 215–30). He was one of the last of the group associated with J. W. Powell in the Bureau of American Ethnology; the broad and daring generalizations of these anthropologists have since proved largely untenable, but their insistence upon the collection of field data in language, culture and anatomy yielded invaluable mate-

rials which served as the basis of the interpretations of later scholars.

CLARK WISSLER

Consult: Washington Academy of Sciences, *McGee Memorial Meeting, 1913* (Baltimore 1916); Hodge, F. W., in *American Anthropologist*, n.s., vol. xiv (1912) 683–87; McGee, E. R., *Life of W. J. McGee* (Farley, Iowa 1915).

MACH, ERNST (1838–1916), Austrian physicist, psychologist and philosopher of science. Mach was born in Moravia. As a youth he was taught classical languages by his father, who had been a tutor in aristocratic families; during the same period he worked two days a week with a cabinetmaker, a training which was to prove valuable in his later experimental work. After completing his studies at the University of Vienna he remained as a *Privatdozent* in physics. In 1864 he was appointed professor of mathematics and later of physics at the University of Graz. Three years later he was called to the University of Prague as professor of physics, serving also as rector during the year 1879–80. In 1895 a special chair of philosophy of the inductive sciences was created for him at the University of Vienna. On his retirement in 1901, after he had suffered a stroke of paralysis, he was made a member of the Austrian house of peers.

Mach began his scientific career with experimental studies in the physiology of the senses, publishing numerous articles in the publications of the Vienna Akademie der Wissenschaften. Later he turned to the more general problems of the methodology and philosophy of science. At an early age he had read Kant's *Prolegomena*, and later he was greatly impressed by Darwin's work. These two influences led him to look upon science not as a body of laws of the universe but as a biological instrument which humanity has fashioned for itself in order to master nature in the simplest way possible. The "principle of economy" as a methodological rule of scientific investigation, into which Mach's doctrine crystallized, was formulated by him shortly after 1861. It held that in order to accomplish a certain result the scientific investigator chooses "the simplest, the most economical and the most expedient means." On the basis of this principle and of the Kantian doctrine of phenomena, which he simplified into a doctrine of sensations as the sole content of immediate experience, Mach undertook a methodological analysis of the whole field of physics. In order to trace the historical development of the separate branches of physics he went back to their sources and endeavored to establish the methods by which the various scientists were guided in their work. He was determined (after the fashion of Berkeley and Hume, whom, however, he had not read) to emancipate physics from all metaphysical elements, understanding by the latter term everything that is not immediately perceivable by the senses.

During his lifetime Mach was not understood and was for the most part repudiated by his colleagues, but after his death his doctrines began to exert a great influence in physics. His sensualistic attitude, from which Mach tried in vain to free himself, is accepted today by numerous physicists as a satisfactory epistemological foundation for science. His repudiation of the concept of substance proved to be a highly effective weapon against the doctrines of crude materialism. Mach also attacked atomism, which he regarded as a metaphysical doctrine. His criticism of the Newtonian conceptions of time and space served as a starting point for the relativity theory, although he himself wholly disagreed with this theory when he learned of it before his death. Not only Einstein's work but even the more recent developments in physics, such as Heisenberg's quantum mechanics, have been inspired by the Machian philosophy.

Mach's influence on the social sciences was mainly through psychology, which was affected by his work on the physiology of the senses and by his doctrine of sensationalism as a theory of mind, the latter being closely associated with the similar views of Avenarius. Indirectly his ideas on the methodology of physical sciences had a repercussion on the social sciences as well, reenforcing the belief propagated by instrumentalist philosophers that all scientific laws are merely conveniences rather than completely binding objective determinations. Mach's philosophical outlook also had an important repercussion on the socialist movement in Russia and Austria. In Russia a faction headed by Bogdanov sought to use Mach's doctrine with its rejection of all metaphysics as the new philosophic base for socialism. In Austria Friedrich Adler and his followers still remain Machians in their general philosophy.

HUGO DINGLER

Important works: *Die Geschichte und die Wurzel des Satzes von der Erhaltung der Arbeit* (Prague 1872, 2nd ed. Leipsic 1909), tr. by P. E. B. Jourdain (Chicago 1911); *Die Mechanik in ihrer Entwickelung* (Leipsic

1883, 8th ed. 1921), tr. from 2nd German ed. by T. J. McCormack (3rd ed. Chicago 1907) with supplement containing additions to 7th German ed. tr. by P. E. B. Jourdain (Chicago 1915); *Die Principien der Wärmelehre* (Leipsic 1896, 4th ed. 1923); *Die Prinzipien der physikalischen Optik* (Leipsic 1921), tr. by J. S. Anderson and A. F. A. Young (London 1926); *Beiträge zur Analyse der Empfindungen* (Jena 1886; 8th ed. with title *Die Analyse der Empfindungen und das Verhaltnis des Physischen zum Psychischen*, Jena 1919), tr. by C. M. Williams and Sydney Waterlow (Chicago 1914); *Populärwissenschaftliche Vorlesungen* (Leipsic 1896, 5th ed. 1923), selections tr. from previous periodical publication by T. J. McCormack (3rd ed. Chicago 1898); *Erkenntnis und Irrtum* (Leipsic 1905, 5th ed. 1926), p. 331–414 tr. by T. J. McCormack as *Space and Geometry in the Light of Physiological, Psychological and Physical Inquiry* (Chicago 1906).

Consult: Dingler, Hugo, *Die Grundgedanken der machschen Philosophie, mit Erstveröffentlichungen aus seinen wissenschaftlichen Tagebüchern* (Leipsic 1924), and *Das Experiment, sein Wesen und seine Geschichte* (Munich 1928); Bouvier, Robert, *La pensée d'Ernst Mach* (Paris 1923); Henning, Hans, *Ernst Mach als Philosoph, Physiker und Psycholog* (Leipsic 1915); Lenin, N., *Materialism i empirio-kritizizm*, vol. xiii of his *Sochineniya* (2nd rev. ed. Moscow 1928), tr. by David Kvitko as *Materialism and Empirio-criticism*, vol. xiii of his *Collected Works* (New York 1927); Becher, Erich, "The Philosophical Views of Ernst Mach" in *Philosophical Review*, vol. xiv (1905) 535–62; Bode, B. H., "Ernst Mach and the New Empiricism" in *Journal of Philosophy*, vol. xiii (1916) 281–90; Enriques, Federigo, *Per la storia della logica: i principî e l'ordine della scienza nel concetto dei pensatori matematici* (Bologna 1922), tr. by Jerome Rosenthal (New York 1929) p. 213–27.

MACHAJSKI, WACLAW (1866–1926), Polish-Russian social theorist and revolutionist. As a revolutionary Marxist, Machajski was arrested in 1892 and spent a decade in prisons and as an exile in Siberia, where he worked out a theory of the labor movement which was elaborated in his writings (all of which were published in Russian over the signature A. Volski) and known in the history of the Russian revolutionary movement as *Makhayevshchina*. In 1903 he escaped from Siberia to western Europe. He returned to Russia after the revolution of 1905, left again about the end of 1907 or early in 1908 and finally returned after the downfall of the czarist regime.

The gist of his theory is the idea that nineteenth century socialism in general and Marxian socialism in particular represent the ideology not of the working class, which he thought of in terms of manual workers only, but of "the growing army of intellectual workers, the new middle class which with the progress of civilization absorbs within itself the middle strata of society." Higher education he considered the privileged property of this rising bourgeois class, a sort of invisible capital expressing itself either actually or potentially in the incomes paid to this class, which are higher than the wages paid manual labor. The most radical, malcontent section of the intellectual workers, according to Machajski, opposes private capitalist rule and seeks its elimination, aiming to substitute its own rule in the form of government ownership or state capitalism (euphemistically called state socialism, socialism or first phase of communism). Under this new system the new ruling class—civil servants, technicians, managers and other intellectual workers constituting the bureaucracy of the state—will enjoy privileged incomes, and to their offspring alone will be transmitted the higher educational opportunities and the resulting higher incomes. The workers will remain at the bottom of the social ladder, self-perpetuating, low waged "slaves of manual labor" just as under private capitalism. Intellectual workers (including the self-taught ex-workers) try to enlist the support of manual workers, winning their confidence by helping them in some of their struggles for better wages and by holding out as a new religion for modern slaves the socialist ideal of human brotherhood for future generations.

Machajski conceived of the emancipation of the working class not through the seizure of power as advocated by the socialist intelligentsia nor through anarchist or syndicalist methods but as a result of a revolutionary economic mass struggle. This struggle was to develop under the leadership of an international organization of conspirators as a succession of general strikes and uprisings for higher wages and for public works for the unemployed. When under the pressure of these economic struggles the private capitalists could no longer satisfy the growing demands of the workers, the state would take over industries, inaugurating state capitalism. The struggle for higher wages would continue against the bureaucracy of the socialized state, until equalization of wages for manual and intellectual work was achieved. This new condition would afford equal opportunities for higher education for all, thus bringing about a classless society.

Machajski called his theory neither socialism nor anarchism; his follower E. Lozinsky has suggested that it be called equalitarianism.

Under the official name of the Workers' Conspiracy groups professing Machajski's opin-

ions were formed in various Russian cities before and during 1905; their adherents, generally known as *Makhaevtzi* (followers of Machajski), conducted revolutionary activities chiefly among unskilled workers and the unemployed, devoting their energies exclusively to the wage struggle, which was to be extended to an economic general strike and to the demand for public works for the unemployed.

Machajski saw in the October revolution of 1917 along with elements of genuine working class revolt the ascent to power of the lowest strata of the middle classes, particularly the semi-intelligentsia and the self-taught ex-workers, who sought not to abolish economic inequality but only to increase the number of its beneficiaries. He considered that the manual workers could not have their own government so long as economic inequality condemned them as a mass to ignorance, and that it was therefore useless for them to endeavor to secure a better government than that of the Soviet state. They could, however, exert mass pressure upon the authorities, forcing them to seize or reduce all higher incomes, to increase wages of manual workers and to provide for the unemployed until all incomes had been equalized.

MAX NOMAD

Works: *Umstvennii rabochii* (The intellectual worker), 3 vols. (vols. i and ii first published "underground" in Siberia in 1898–99, vol. iii published in Geneva in 1904, new ed. published under the pseudonym "A. Volski" in 1905–06); *Bankrotstvo sotsializma XIX stoletiya* (Bankruptcy of the nineteenth century) (Geneva 1905); *Burzhuaznaya revolutsiya i rabochee delo* (The bourgeois revolution and the workers' cause) (Geneva 1905); *Rabochii zagovor* (The workers' conspiracy) (Geneva 1908); *Rabochaya revolutsiya* (The workers' revolution) (Moscow 1918); "Primechaniya perevodchika" (Notes of the translator) in Marx, K., and Engels, F., *Svyatoe semeistvo* (Holy family), 2 vols. (St. Petersburg 1906) vol. ii, p. 39–63.

Consult: Lozinsky, E., *Chto zhe takoe, nakonetz, intelligentsiya?* (What, after all, is the intelligentsia?) (St. Petersburg 1907), and *Itogi i perspektivi rabochago dvizheniya* (Achievements and prospects of the labor movement) (St. Petersburg 1909); Ivanov-Razumnik, R. V., *Chto takoe "Makhaevshchina?"* (What is "Makhaevism?") (St. Petersburg 1908); Sirkin, L., *Makhaevshchina* (Makhaevism) (Moscow 1931); Nomad, Max, *Rebels and Renegades* (New York 1932) ch. v; *Obshchestvennoe dvizhenie v Rossii v nachale xx veka* (The social movement in Russia at the beginning of the 20th century), ed. by L. Martov and others, 4 vols. (St. Petersburg 1909–14) vol. iii, p. 523–33.

MACHIAVELLI, NICCOLÒ (1469–1527), Italian historian, statesman and political theorist. Machiavelli, who was born in Florence of a noble but poor family, began his public career in 1498 as a clerk in the chancery of the Florentine republic. The following year he was appointed secretary to the Dieci di Libertà e Pace (Ten of liberty and peace) and in this capacity was sent on several missions to Italian and foreign courts. In 1502 he was sent to Cesare Borgia, who with the help of the French and papal troops was attempting to unite Romagna and The Marches under his rule. Machiavelli was almost an eye witness to the famous Senigallia ambush, in which Borgia had four chieftains of mercenary troops, who had deserted his side and been won back by false promises, strangled to death. He was greatly impressed by the words and deeds of Borgia and most probably derived from him the model for his *Il principe*. When the Medici with the help of Spanish troops reentered Florence and again became masters of the city, Machiavelli, who had remained faithful to the gonfalonier Soderini, was deprived of his secretarial position; and after some weeks of imprisonment he retired from public life. It was during this period of retirement, in 1513, that he wrote his most famous work, *Il principe*. In 1522 he succeeded in regaining to a certain extent the favor of the Medici. But in 1527, when they were overthrown and again banished, Machiavelli was charged with having received favors from them and was again eliminated from public life.

On Machiavelli and above all on his *Il principe* an entire literature has been written. Never has a writer been so extolled and so abused. He has been hailed by many as the true founder of political science; on the other hand, the term Machiavellism has become a synonym for craft and duplicity and for the prevalence of expediency over truth and loyalty whenever it is a question of aggrandizing a state or preserving its government. Machiavelli cannot, however, be properly understood unless he is regarded in the setting of the political conditions of his time.

At the end of the fifteenth century and at the beginning of the sixteenth Italy, split into a multitude of states, was from a military point of view very weak, since almost all the states had entrusted their defense to mercenary troops, and was continually invaded and devastated by French, Spanish, German and Swiss armies. No state was strong enough by itself to resist effectively France or Spain, and the mercenary troops had sufficiently proved their inferiority to the foreign armies. It was by observing these conditions and reflecting upon them

that Machiavelli was led to conclude that only by the creation of a great Italian state and through the organization of a national militia would it be possible to expel the foreigners beyond the Alps. Although it cannot be denied that in dedicating *Il principe* to the Medici he aimed to gain the sympathies of the new masters of Florence, it is none the less true that he intended at the same time to draw up a program for the guidance of that Italian prince who would determine to free Italy from foreign rule.

The chief weakness of Machiavellism is the striking contradiction between the abject character of its means and the nobility and loftiness of its goal. It is difficult to believe that a person capable of resorting to the vile stratagems of the petty Italian tyrants of the period should at the same time have possessed such greatness of mind as to adopt Machiavelli's patriotic program. And if it is true that the precepts of a most rigid morality cannot be observed in politics, it is no less true that politics is an art in which the sense of limits and proportion is of the greatest importance. It is for this reason that lies and disloyalty to achieve their purpose must be employed with great caution and parsimony. One discovered to be a habitual liar and a breaker of sworn agreements is not trusted. Elementary as these considerations are, they seem to have escaped Machiavelli's attention, a fact all the more strange since they were certainly not neglected by other Italian writers, such as Guicciardini and Scipio di Castro.

Machiavelli's maxims are nearly always based upon a pessimistic conception of human nature and are very often too general to be of much assistance in specific cases. Human beings are in part as he describes them—namely, "ungrateful, deceitful, cowardly, and greedy"; but even Machiavelli admits that this is not true of all human beings. Moreover he forgets to add that even those persons who resemble the portrait drawn by him are sometimes capable of a certain manifestation of altruism and generosity; and he fails to tell how to distinguish the so-called morally superior persons and how it is possible to profit from the small portion of goodness and loyalty that can be found even among morally inferior individuals.

The world wide fame and reputation of Machiavelli's ideas have been due to many factors, some of which are of a temporary and local and others of a permanent character. Among the former may be mentioned the bitter polemical discussions which took place in the second half of the sixteenth century between Catholics and Protestants, in which each party accused the other of acting according to Machiavelli's principles: in a sense both parties were justified in their charges, since the Florentine writer professed on the one hand to be a Catholic and on the other hand displayed very little respect for the pope and the church. The Italians of the nineteenth century discovered in Machiavelli the precursor of the Risorgimento; similarly, his writings were popular among the leaders of the German national movement in the same century. Among the factors of more permanent character are undoubtedly the calm and cold objectivity with which Machiavelli describes the multitude of defects displayed by the human mind and the courage with which he points out the faults and vices of both the great and the humble, of the common people as well as of the classes that participate actively in political life. It is true that Machiavelli's conception of things and human beings is often inadequate, for he sees essentially only one side and nearly always the worse side of the extremely complicated nature of human beings. This side, however, he depicts with an incisiveness which impresses the reader in a singular manner and calls forth either great admiration or great repugnance and sometimes both.

Although Machiavelli claimed that his aim was to teach his fellow beings the art of deceiving and to prove to them the advantages and the necessity of lying, as a writer he was extremely sincere. He possessed to an exceptional extent that professional literary honesty which compels the author to convey to his readers his real opinions, without worrying over the success or failure of his work. He was honest in his private life and as an official; if he tried to dictate to others the rules of the art of deceiving in public life, he was himself by no means a political climber. Had he been a rogue and a self-seeker his public career would have been, in view of his talents, much more brilliant than it actually was; he would not have died in poverty, and he would have abstained from writing *Il principe*, for all true rogues know quite well that the first rule of their art consists in not revealing its secrets to others.

Other important works by Machiavelli were *relazioni* on his mission in France and Germany; *Discorsi sopra la prima deca di Tito Livio* (1521), in which he gave advice to republics and scrutinized the causes of ancient Roman grandeur; *Libro dell' arte della guerra* (1521), in which he confirmed the concepts already ex-

pressed in *Il principe* on the necessity for republics to have their own national militias; *La vita di Castruccio Castracani* (1532) and *Le storie fiorentine* (1532), interesting for the part in which he narrates the events occurring in the fifteenth century; and, finally, the *commedie*, often marked by obscenity, an unfortunate characteristic of the period, but not, however, without *vis comica*.

GAETANO MOSCA

Works: *Opere*, ed. by P. Fanfani, L. Passerini, and G. Milanesi, 6 vols. (Florence 1873–77), tr. by Ellis Farneworth, 4 vols. (2nd ed. London 1775); *Historical, Political and Diplomatic Writings*, tr. and ed. by C. E. Detmold, 4 vols. (Boston 1882). The best edition of *Il principe* is by A. L. Burd, with an introduction by Lord Acton (Oxford 1891), and the best English translation is that by N. H. Thomson (3rd ed. Oxford 1913).

Consult: Villari, Pasquale, *Niccolò Machiavelli e i suoi tempi, illustrati con nuovi documenti*, 3 vols. (3rd ed. Milan 1912–14), tr. by L. W. M. Villari, 2 vols. (London 1898); Tommassini, Oreste, *La vita e gli scritti di Niccolò Machiavelli*, 2 vols. (Rome 1883–1911); Oriani, Alfredo, *Fino a Dogali* (Bari 1918); Mosca, Gaetano, "Encore quelques mots sur 'Le prince' de Machiavel" in *Revue des sciences politiques*, vol. xlviii (1925) 481–509, and vol. xlix (1926) 5–27; Ercole, Francesco, *La politica di Machiavelli*, Politeia, vol. v (Rome 1926); Meinecke, Friedrich, *Die Idee der Staatsräson* (3rd ed. Munich 1929) ch. i; Hearnshaw, F. J. C., in *The Social and Political Ideas of Some Great Thinkers of the Renaissance and the Reformation* (London 1925) ch. iv; Allen, J. W., *A History of Political Thought in the Sixteenth Century* (London 1928) p. 447–94; Toffanin, Giuseppe, *Machiavelli e il "Tacitismo"* (Padua 1921); Schubert, Johannes, *Machiavelli und die politischen Probleme unserer Zeit* (Berlin 1927); Elkan, Albert, "Die Entdeckung Machiavellis in Deutschland zu Beginn des 19. Jahrhunderts" in *Historische Zeitschrift*, vol. cxix (1919) 427–58; Praz, Mario, *Machiavelli and the Elizabethans* (London 1928); Mayer, E. W., *Machiavellis Geschichtsauffassung und sein Begriff Virtù*, Historische Bibliothek, vol. xxxi (Munich 1912); Fueter, Eduard, *Geschichte der neueren Historiographie* (2nd ed. Munich 1925) p. 61–69.

MACHINE, POLITICAL. "Such words as 'boss' and 'machine' now imply evil," Theodore Roosevelt observed in his *Autobiography*, "but both the implication the words carry and the definition of the words themselves are somewhat vague. A leader is necessary; but his opponents always call him a boss. An organization is necessary; but the men in opposition always call it a machine." Roosevelt might have added that the boss generally claims the title of leader and that the machine, usurping the name as well as the thing, calls itself the party organization. Such facts are significant. They indicate that in popular usage the words have a derogatory implication, that the boss is looked upon as a perverted leader and the machine as a perverted organization. The test is one of motive and method. According to Ostrogorsky the men of the machine look out for themselves rather than for the party; according to Jeffe Macy their purposes are purely selfish and inconsistent with the public welfare. They are unscrupulous both in their use of political power and in the methods that are employed in gaining and holding it. They practise politics for profit.

The distinction suggested here in the contrast between public interest and private interest has been emphasized by the periodic revelation of abuses in municipal government, abuses which take the form of an alliance between politics and predatory business concerns and between politics and the criminal elements. But the term machine, like the term boss, is frequently employed without these sinister connotations. When newspapers spoke of the "Townley machine" in North Dakota or of the "La Follette machine" in Wisconsin they did not mean that either Townley or La Follette was personally corrupt or tolerated corruption in others. They were impressed by the fact that a particular group of politicians had established more or less permanent control over the Republican organization, enforcing such hierarchical discipline and moving with such relentless precision as to evoke the idea of a machine.

Obviously this term, like most political terms, can be defined on the basis of usage in a considerable variety of ways. Here it will be taken to mean a group composed mainly of professional politicians who gain and hold power by secret and often corrupt methods—although with a show of popular sanction—who dictate party nominations and appointments to public office and who set personal advantage above that of the party or the community.

Professional politics emerged in the era of Jacksonian Democracy, when the necessity of regimenting and mobilizing the newly enfranchised masses placed a great emphasis upon party organization. Politicians of a new type, proficient in the arts of management and scientific in their modes of action, rudely thrust aside the landed proprietors who had governed in the time of Hamilton and Jefferson. As early as 1823 Niles described them with infinite distaste as "persons who have little, if any, regard for the welfare of the republic, unless as immediately connected with, or dependent on, their own

private pursuits . . . " (*Niles' Weekly Register*, vol. xxxiii, 1823, p. 370). They disguised the essentially oligarchic character of their regime by flattering the voters while shrewdly manipulating them; and with the increase in the number of elective offices, which they made it their business to control, and with the application of the spoils system to the civil service they drew their sustenance from the public treasury.

There gradually took place a specialization of political functions. The people were engrossed in their private affairs, absorbed in the supreme task of conquering the continent and laying hold of its resources. They had, as Walter Weyl says, "neither leisure nor inclination for the drudgery of running the government. Consequently, the making of nominations, the control of elections, the divisions of spoils, and other profitable labor came to be the work of a despised ruler, the professional politician." Public service, like the continent, was appropriated for private gain. It should be observed of course that political activity and political power always and everywhere tend to become a monopoly of the few. Professor Michels in his study of *Political Parties* formulates an "iron law of oligarchy," having discovered that in Europe even among the socialists party decisions are made by a mere handful of the members, sometimes ludicrously small. What happened in the United States may be said therefore to illustrate a general law. But certain peculiarities of American politics must be explained in terms of the local environment.

In the first place, why should the oligarchy have tended to become so disreputable? Walter Weyl gives an answer. Politics was business, he says, but low grade business. "Not offering the boundless possibilities of other enterprises, it attracted a poorer quality of men. In De Tocqeville's day an American was not ordinarily intrusted with public business until he had signally failed in his private business." Perhaps one may hazard a further opinion. Great issues, which would rouse enthusiasm and command the loyalty of high minded men, have seldom marked the party conflict; in normal times the two major parties have faced each other without any fundamental divergence of policy. This situation may be attributed to the size of the country, the diversity of economic and other interests and the perpetual need of compromise as a basis for large scale cooperation. And so elections degenerate into a crude struggle for office, say the critics, and become attractive to the cupidity of the mere spoilsman. In the second place, the apathy of "good citizens" and their willingness to abdicate in favor of the professional politician was due to something besides absorption in their own affairs. Politics became too complicated for the amateur. The absurd multiplication of elective offices, with short terms and rotation as a supposed safeguard against official arrogance, and the elaborate system of party primaries and conventions for making nominations gave the most conscientious voter a sense of frustration. He could not penetrate the technicalities; needing help he entrusted his baffling problems to the professional politician.

The rise of the machine must be connected also with a feature of American government which discourages the growth of effective and responsible leadership. The framers of the constitution, as Woodrow Wilson observed, set up the check and balance system "to keep government at a sort of mechanical equipoise by means of a standing amicable contest among its several organic parts." They distrusted power as dangerous to liberty; and therefore they spread it thin and erected barriers against its concentration. In our state governments, where the principal executive officers were elected and thus made independent of one another, this fatal weakness was still more pronounced; and these officers had been deprived by minute and specific statutory directions of all latitude in the discharge of their official duties. A similar dispersion of power marked local areas. As a consequence, when the people or particular groups among them demanded positive action, no one had adequate authority to act. The machine provided an antidote. There was built up, in the words of Herbert Croly, "a much more human system of partisan government, whose chief object soon became the circumvention of government by Law . . . . The lawlessness of the extra-official democracy was merely the counterpoise of the legalism of the official democracy. The lawyer having been permitted to subordinate democracy to the Law, the Boss had to be called in to extricate the victim, which he did after a fashion and for a consideration" (*Progressive Democracy*, New York 1914, p. 254).

The boss is the kind of leader that the machine develops. He typifies its efficiency as an instrument of power, which in contrast to the arrangements in American states and municipalities objectifies the principle of concentration. His operations are facilitated, it is true, by certain more or less accidental conditions of American democ-

racy: the existence of the spoils system, the overelaboration of electoral processes, the indifference of "good citizens," the pliability of the ignorant masses; and his opportunities for aggrandizement have been vastly enlarged during the past half century by his traffic with big business—he has become the broker, the indispensable intermediary in the purchase and sale of political privileges. But these various factors hardly make clear his essential function. The boss is the man who, like the prime minister abroad, brings together the scattered fragments of power. Leadership is necessary; and since it does not develop readily within the constitutional framework, the boss provides it in a crude and irresponsible form from the outside. His tenure is not affected by any doctrine of short terms and rotation; Penrose ruled Pennsylvania for fifteen years, Murphy ruled New York City for twenty years and Cox ruled Cincinnati for thirty years. The scope of his authority is not limited by minute prescriptions of law or by any scruples about the separation of powers: if he is a county boss he gives orders to the board of supervisors, to the district attorney and in fact to all public officers, including even judges.

Within the pyramidal structure of the machine there are big bosses and little bosses connected in a sort of feudal relationship. Their position depends ultimately upon their control of the party primaries, which they regard as more important than the subsequent elections. The boss of the assembly district or city ward holds his place only as long as he can dominate a majority of the precincts; and he maintains therefore intimate and mutually advantageous contacts with his subordinates, the precinct captains, whose success or failure in delivering the vote on primary day involves his own fortunes. It is often as precinct captain that the future boss gets his training and demonstrates his possession of the necessary qualifications. What he needs above all is the ability to handle men. "There's only one way to hold a district," according to George Washington Plunkitt of Tammany Hall; "you must study human nature and act accordin'" (Riordon, W. L., *Plunkitt of Tammany Hall*, New York 1905, p. 68). As captain he must be a friend to every man, assuming if he does not feel sympathy with the unfortunate and utilizing in his good works the resources which the boss puts at his disposal. He must be loyal; according to Plunkitt he is never justified in going back on his boss, "as long as the leader hustles around and gets all the jobs possible for his constituents" (p. 68). The great test is efficiency. The boss rules by right of conquest and through the possession of those native qualities which are sufficient in themselves without any formal grant of authority.

The machine may extend its dominion over the whole state either through the ascendancy of a single boss or through the operations of a "ring" of local bosses who act in concert. Thus for three quarters of a century Pennsylvania was dominated first by the Camerons, father and and son, then by Quay and finally by Penrose—an unbroken succession. As a rule, however, the county or the city is the unit. It is not incongruous for the ward boss to do homage to the city boss and to take orders from him. That feudal relationship serves the interests of both. The overlord fills a necessary role in coordinating the different parts of the machine and in opening up larger sources of patronage and perhaps of graft. For the same reasons a state boss may be able to impose himself upon the local bosses and machines, since it is his function to coordinate their activities in the larger field of state politics, to dictate and distribute nominations and appointments as well as executive and legislative favors. The logic of the situation suggests indeed that the machine should erect a structure paralleling the government in every political area. But with the size of the area the engineering difficulties increase. The state boss exists only by way of exception; what is usually found is a group or "ring" of local bosses whose uncertain and fluctuating control of the state government depends upon secret accommodations. There has never been a national boss. Nevertheless, the need of a unifying agency cannot be denied; and thus the phenomenon, met with more and more frequently, of a president or governor like Theodore Roosevelt with a big stick and a contempt for legalistic restraints.

The machine lives off the country like a conquering army. In its earlier period the spoils of office furnished the chief means of subsistence. There were, first of all, the numerous elective offices, which might be sold under the disguise of campaign contributions or given to faithful adherents as a reward for service and as a source of livelihood. Then, its ticket having triumphed, the machine applied to the civil service the principle of Senator Marcy that "to the victor belong the spoils." By giving his henchmen and heelers jobs that he could at any time take away the boss not only kept them in a state of dependence but replenished the treasury by levying a percentage

assessment upon their salaries. Patronage still remains a most important factor in the economy of the machine. But the offices are prized much less for the salaries attached to them than for their strategic value as a base of operations. In the decades following the Civil War new factors came into play. The rapid growth of cities afforded opportunities for pillage on a colossal scale, particularly in the awarding of public contracts and in the granting of franchises for public utilities. Tweed's accomplishments in New York and McManes' in Philadelphia differed in proportions but not in character from what was being done almost everywhere in the country. Eastern cities suffered most, because the hordes of immigrants settled there and reacted favorably to the shrewd benevolence of ward politicians. This was also a time of remarkable economic expansion. The great railway corporations and industrial monopolies pushed forward ruthlessly toward their objectives and by lavish corruption bought every sort of privilege and immunity. The machine now established its lucrative relationship with big business.

The tribute that the machine exacts from the community assumes such varied forms as to defy enumeration. It may fall within the category of what Plunkitt called "honest graft." Thus with private information that the city intends to widen a street or acquire a park or build a subway the politician buys parcels of land which will be condemned at a price fixed by friendly commissioners or which will soar in value when the improvements get under way. The tribute may, on the other hand, be derived from the protection and exploitation of vice and crime. This activity centers in the police department. While usually concerned with gambling, prostitution and the illegal sale of liquor it sometimes involves an alliance with racketeers and gunmen. But what the police do in permitting violations of the law is characteristic of all branches of administration which can exercise a similar discretion. The district attorney and even the magistrate, being creatures of the machine, may acquiesce in monstrous perversions of justice. The tax assessor may levy blackmail by threatening a rigorous search for hidden personal property. The building inspector may fasten upon the most insignificant violations of the code or for a consideration close his eyes to the most glaring and pernicious. When very large sums are involved, as in the erection of a great hotel or apartment house, the bribery of the building department may be ingeniously disguised; somehow a certain law firm—notoriously high in its charges for the service—can always secure a relaxation of vexatious requirements. Not the least flagrant abuses are connected with the letting of public contracts. An insider can safely underbid his competitors if he knows that the elaborate safeguards of the law will be ignored, that specifications regarding the materials to be used will not be enforced, that time clauses will be waived and that fraudulent claims will be paid without investigation. This explains the role of the machine politician as sleeping partner in some contracting firm. City councils and state legislatures have profited by blackmailing as well as by serving corporations; blackmail is paid in return for the withdrawal of a measure that has been introduced solely for the purpose of extortion.

The depredations of the machine growing bolder with increased opportunities gradually aroused popular resentment and indignation; and since the parties did little or nothing to purify themselves, an attempt was made to exorcise the devils of corruption by statute. First came civil service reform, which by applying the merit system to appointive offices robbed the victor of his spoils. Unfortunately the reform commended itself to few of the states; and therefore the results were disappointing. Next came the introduction of the Australian ballot. It was expected to stop the intimidation or bribery of voters and to encourage independent candidatures by reducing the cost of elections. But since the form of the ballot diverging from its Australian prototype facilitated the voting of a straight ticket, the machine suffered little damage from the change. The first reform had aimed at starving the victorious machine; the second at reducing its advantage in the election, its means of victory. The third reform went behind the election and regulated the nominating processes. The direct primary took the place of the delegate convention. At the same time in the hope of displacing the oligarchy of professional politicians and restoring power to the rank and file the parties were deprived of their voluntary character and subjected to drastic statutory regulation. Other weapons were placed in the hands of the people: the initiative and referendum, which gave them a direct control over legislation; and the recall, which allowed them to sit in judgment on their elected officers in the interval between the all too frequent regular elections.

These later reforms have a common character-

istic which invites criticism. Instead of simplifying the labyrinth they have added to its complexities. The harassed voter is not only confronted with a preliminary campaign of election within the party but also asked on the day of the general election to express an opinion on all sorts of legislative measures. He has become therefore still more inadequate, still more dependent on the specialist of the machine for guidance. The officials of the party are now entangled, like the officials of the government, in a web of legalistic restrictions, from which presumably they must wait for the boss to extricate them. The escape from machine politics lies not in this direction but in simplifying structure and processes and in concentrating power and responsibility. If the grip of the machine has been loosened somewhat, the improvement must be attributed to factors which have raised the tone of business as well as politics and to technical improvements in administration. Public opinion stimulated by innumerable civic organizations has become more alert, while systems of cost accounting and settled forms of procedure act as a bar to some of the grosser forms of fraud.

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See: PARTIES, POLITICAL; PUBLIC OFFICE; SPOILS SYSTEM; CORRUPTION, POLITICAL; ELECTIONS; PRIMARIES, POLITICAL; CAMPAIGN, POLITICAL; CONVENTIONS, POLITICAL; VOTING; CAUCUS; FACTION; CLUBS, POLITICAL; REFORMISM; CIVIL SERVICE; INDEPENDENT VOTING.

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