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THE WORKS OF  
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THE COLLEGE OF PHILADELPHIA

BEING HIS PUBLIC DISCOURSES UPON

JURISPRUDENCE AND THE POLITICAL SCIENCE

INCLUDING LECTURES AS PROFESSOR OF LAW, 1790-2

EDITED BY

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## CHAPTER XI.

### OF CITIZENS AND ALIENS.

LET us proceed to investigate still farther the component parts of which civil government and all its subordinate establishments consist. They consist of citizens.

I have already observed <sup>1</sup> that the social contract is a contract of a peculiar kind; that when correctly analyzed, it is found to be an assemblage of agreements equal, in number, to the number of individuals who form the society; and that, to each of those agreements, a single individual is one party, and all the other individuals of the society are the other party.<sup>2</sup>

The latter party I have considered heretofore; and have called it the people. The former party I am now to consider; and, in order to avoid confusion, I call it, in this discussion, the citizen; and when I shall have occasion to refer to more subordinate agreements than one, I shall call the individuals, parties to them, by the name of citizens.

I know that the term *citizen* is often applied to one of the more numerous party—to one of the people: and I shall be obliged to take the description of a citizen from the character which he supports as one of the people. But

<sup>1</sup> Ante, p. 103.

<sup>2</sup> This raises again the question who are the people, and illustrates the consequences which flow from an erroneous assumption of a first principle. See Appendix. Note A.

you will easily perceive, that the same person may, at different times, act or be viewed in different characters; and though his description be taken from one of them, the account of his duties and of his rights too may, on a particular occasion, be referred to the other. This I have chosen to do, rather than to introduce an unknown phrase, or to use a known phrase in a new signification. Besides, the expression is frequently employed also in the sense in which I now use it. "Generally speaking," says the great political authority,<sup>1</sup> Aristotle, "a citizen is one partaking equally of power and of subordination."

A citizen then—to draw his description as *one* of the *people*—I deem him, who acts a *personal* or a *represented* part in the legislation of his country.<sup>2</sup> He has other rights; but his legislative I consider as his characteristic right. In this view, a citizen of the United States is he, who is a citizen of at least some one state in the Union: for the members of the house of representatives in the national legislature are chosen, in each state, by electors, who, in that state, have the qualifications requisite for electors of the most numerous branch of the state legislature.<sup>3</sup> In this view, a citizen of Pennsylvania is he, who has resided in the state two years; and, within that time, has paid a state or county tax: or he is between the ages of twenty-one and twenty-two years, and the son of a citizen.<sup>4</sup>

I have, on another occasion,<sup>5</sup> traced the description of a citizen in every other state of the Union: to your recollection of that investigation, and to the constitutions of the several states, I now refer you.

When a man acts as one of the numerous party to the agreements, of which I have taken notice; it is his right,

<sup>1</sup> 1 Rna. Anc. Eur. 362.

<sup>2</sup> Cons. U. S. art. 1, s. 2.

<sup>3</sup> Ante, pp. 18-22.

<sup>4</sup> See Appendix. Note A.

<sup>5</sup> Cons. Penn. art. 3, s. 1.

according to the tenor of his agreements, to govern; he is one of the *people*. When he acts as the single party to that agreement, which he has made with all the other members of the society; it is his duty, according to the tenor of his agreement, to obey; he is a *single citizen*. Of this agreement, indeed, it is impossible to ascertain all the articles. From the most obvious deduction of reason, however, one article may be specified, beyond all possibility of doubt. This article, of prime importance, is--that to the public will of the society, the private will of every associated member must, in matters respecting the social union, be subordinate and submissive. The public will of the society is declared by the laws. Obedience, therefore—civil obedience—obedience to the laws and to the administration of the laws—this is a distinguishing feature in the countenance of a citizen, when he is seen from this point of view.

That men ought to be governed, seems to have been agreed on all hands: the reason is, that, without government, they could never attain any high or permanent share of perfection or happiness. But the question has been—by whom should they be governed? And this has been made a question, by reason of two others—by whom *can* they be governed?—are they capable of governing themselves?

To this last question, Mr. Burke, in the spirit of his late creed,<sup>1</sup> has answered in the negative. "Society," says he, "requires not only that the passions of individuals should be subjected, but that even in the mass and body as well as in the individuals, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection. This can only be done *by a power out of themselves*." This negative answer has been, from time immemorial, the stronghold of tyranny:

<sup>1</sup> Refl. on Fr. Rev. 47.



and if this negative answer be the true one, the strong hold of tyranny is, in fact, impregnable to all the artillery of freedom. If men should be governed; and if they cannot govern themselves; what is the consequence? They must be governed by other masters.

An opinion, however, has, by some, been entertained, that the question, which I last mentioned, may receive an answer in the affirmative. Men, it has been thought, are capable of governing themselves. In the United States, this opinion, which heretofore rested chiefly on theory, has lately been put in a train of fair practical experiment. That this experiment, to human happiness so interesting, may be crowned with abundant and glorious success, is, of all things in this world, the "consummation most devoutly to be wished."

But to its glorious and abundant success, the obedience of the citizens is, of a necessity, absolute and supreme. The question, which has been proposed—the question, in the negative answer to which tyranny has triumphed so long and so generally—the question, concerning which philosophers and patriots have indulged, and been pleased with indulging, a contrary sentiment—the question, which in the United States, is now put upon an experiment—this all-important question is—not merely nor chiefly—are men capable of governing? Of this, even tyrants will admit the affirmative; and will point to themselves as living proofs of its truth. But the question is—are men capable of governing *themselves*? In other words; are they qualified—and are they disposed to be their *own* masters? For a moral as well as an intellectual capability is involved in the question. In still other words; are they qualified—and are they disposed to *obey themselves*? For to government, the correlative inseparable is obedience. To think, to speak, or to act, as if the former may be exercised, and, at the same time, the latter may not be performed, is to

think, to speak, or to act, in a manner the most contradictory and absurd.

By a long and minute deduction, I proved, in a former lecture,<sup>1</sup> that, on the true principles of freedom, a man is the only human power, by whom he himself can be *bound*. It requires but a very small variation of phrase, and none of sentiment, to say, that on the true principles of freedom, man is the only human power, by whom he himself can be *governed*.

Are we made so waywardly, that what, in principle, is true and right, must, in practice, be false and wrong? Surely not.

Is the *safety* of man endangered by obedience? What can be a source of greater security, than to be governed only by a law, which has been made by himself, and by others, with whom he participates a general identity of interest, and a perfect equality of duties and of rights?

Is the *freedom* of man infringed by performing the service of obedience to such a law, made as has been mentioned? This service bears, we think, resemblance as near as, being human, it can bear, to the service, which, with a propriety truly striking and strong, is denominated "perfect freedom."

Is the *dignity* of man degraded by observing a law? The Supreme of Being!—he himself worketh not without a rule!

In a *moral* view, self government increases, instead of impairing, the security, the liberty, and the dignity of the man; in a *political* view, self government increases, instead of impairing, the security, the liberty, and the dignity, of the citizen.

Attend now to the result of the whole.—In a free and well constituted government, the first duty of its every member is—obedience to the laws. That they be true

<sup>1</sup> Ante, vol. 1, p. 190, et seq.

and faithful to themselves, is the allegiance, which a legitimate republic requires from her citizens: to themselves they cannot be true and faithful, unless they obey as well as make the laws—unless, in the terms in which a citizen has been defined, they partake of subordination as well as of power.<sup>1</sup>

[<sup>1</sup> In the celebrated allegiance cases of South Carolina, which were decided in 1834, and where the question was as to whether the citizen owed the paramount allegiance to the State or to the Nation, after exhaustive and very able arguments of counsel examining the very fundamental principles of our government, a decision which was remarkable from the fact that, notwithstanding the writing of Calhoun, the nullification spirit of the large portion of the citizens of South Carolina, it was decided in the teeth of the ordinance of nullification that the paramount allegiance was not to the State.

Judge O'Neill, in delivering his opinion, comments upon the inapplicability to our institutions of the word allegiance, if used in its feudal sense. He says:—"I admit that in the feudal system, it arose out of the tenure by which land was holden from the lord paramount. This was the bond which could never be broken, because it took its origin in the connection which originally existed between the serf and the soil. It was hence that allegiance was held to be perpetual."

"The history of England shows that the word is not even understood in her unchanging government of King, Lords, and Commons, in the sense in which it originally was.

"Our forefathers, when they crossed the Atlantic, and sought in the wilderness, among its savages and beasts of prey, that personal security and freedom of opinion which they could not find at home, were still followed by this phantom of allegiance.

"From the Declaration of Independence, I think that allegiance, in its feudal sense, or in that in which it is understood in the English limited monarchy, became wholly inappropriate to our complex form of government. In any and every point of view in which I am able to consider the subject, allegiance in this country is due to the government of the people. I have, therefore, and I shall use throughout this opinion, the term allegiance, because it is the most commonly used to denote the duty of the citizen to the government. But, I apprehend, it is wholly misapplied in the land of Washington and Franklin; or to be exclusively Carolinian, in the land of Rutledges, the Pickneys, the Middletons, the Hegers, the Heywards, the Draytons, and the Laurenses. Allegiance is properly the duty which the subject owes to the King, and whether personal or derivative, is an unfit garb to clothe the republican. It is like putting on the statue of Washington the robe of the Cæsars. Every one

As a citizen of a republican government owes obedience to the laws; so he owes a decent, though a dignified respect to those who administer the laws. In monarchies, there is a political respect of person: in commonwealths, there should be a political respect to office. In monarchies, there are ranks, pre-eminences, and dignities, all personal and hereditary. In commonwealths, too, there are ranks, pre-eminences, and dignities; but all official and successive. In monarchies, respect is paid without a prospect of return. In commonwealths, one may, next year, succeed, as an officer, to the respect, which, this year, he pays as a citizen. The dignities of office are open to all.

You will be pleased to hear, that, with regard to this as well as to many other subjects, we have renewed, in our governments, the principles and the practice of the ancient Saxons. Between dignity and duty, no separation was made by them. In the early period of the Anglo-Saxon state, the allodial proprietors were numerous; their estates were generally small; and all were understood to be of the same rank and condition. Some, indeed, were distinguished above others by their character and their talents; but the superiority derived from this source was accompanied with no legal pre-eminence or power.<sup>1</sup>

knows that it has no connection with or fitness for republican simplicity. Our duty is obedience to the government of the people; and if there is any other tie existing in this country, I have been unable to discover it.

“What is to be understood by the government of the people? I answer, the Constitutions of the State and the United States.”

“When we speak of citizens, we mean the people of a free government; and they stand in the relation to the government, as incurring in support of the institutions of freedom all the obligations which the subject owes to his king. It is allegiance in the dominions of the Autocrat of all the Russias; it is here constitutional obedience.”

The State ex rel. *M'Cready v. Hunt*, 2 Hill, South Carolina Reports, pp. 1-493.

<sup>1</sup> Millar, 236.]

So likewise it was in the heroic ages of Greece: no distinction was then known among men, except the distinction, truly honorable, which arose from a difference of abilities and merit.<sup>1</sup>

Titles of nobility in England, though now merely personal, were, in their origin, altogether official. The heretoch or duke was intrusted with a military department: the marquis was appointed to guard the frontiers or marches of the country: the alderman or earl was, as we formerly saw, the first civil officer of the shire. In the juridical history of Engiand, the first arbitrary title of honor, without the shadow of office or duty annexed to it, makes its appearance so late as the reign of Henry the Sixth.

Under a republican government, it is prudent as well as proper—it is the interest as well as the duty of the citizens, to show a political respect for office. In the government they have an interest: in every office and department of the government they have an interest: this interest requires, that every department and every office should be well filled: in a commonwealth, respect attached to office is frequently the principal inducement to its acceptance by those, who are qualified to fill it well.

On the citizen under a republican government, a third duty, more severe, it may be thought, than either of the former, is strictly incumbent. Whenever a competition unavoidably takes place between his interest and that of the public, to the latter the former must be the devoted sacrifice. By the will and by the interest of the community, every private will and every private interest must be bound and overruled. Unless this maxim be established and observed; it is impossible that civil government could be formed or supported. Fortunate, however, it is, that in a government formed wisely and administered impartially,

this unavoidable competition can seldom take place, at least in any very great degree.<sup>1</sup>

[<sup>1</sup> Any institution which is inherently selfish and incapable of such self-denial as is here described is antagonistic to a republican government, and any personality which experience shows to be habitually selfish should be curtailed in rights, if not destroyed. The experience of the last thirty years demonstrates that the government, under undoubted power, but doubtful policy, has created and fostered a species of citizen, an artificial person, which displays several dangerous tendencies, among them is the following: The corporation, being an artificial person, lacks the moral obligation of the citizen, being incapable thereof. The corporation for profit is essentially selfish; it is so by nature, and experience has shown that they have been true to their nature.

As an instrument of corruption and a means of plunder of the public at large and innocent shareholders the modern corporation finds no parallel in history.

The State (in its broad sense) is a corporation composed of individuals who unite by voluntary consent, for mutual protection. Our form of government is what is known as Republican, *i. e.*, self-government by representatives,—self-restraint by the individual, and regard for the general weal on the part of the representative are the keystones of the structure.

The corporation is at war with both, and no one will deny the fact. The supposed duty of corporation officers, coupled with personal interest, tends to obscure the higher duty of citizenship. The results of the century have demonstrated that there is nothing in the mere fact of citizenship which renders the citizen more faithful in obedience than the allegiance of a subject.

And hence politicians ask, Is self-government anything more than a beautiful theory?

All agree that it can only exist with intelligence and integrity as the woof and warp of the fabric.

Are privileges (franchises) granted to favored individuals which give them an advantage over their fellow-citizens whereby the public suffer and an inequality is fostered, and is this done in relation to subjects where there is no necessity for delegating the matter to a private person or corporation, but, on the contrary, the matter is public in its nature and capable of execution by the public for the public good and profit? Then it follows that the public weal is sacrificed to private gain. If it is done knowingly this is treason in guilt, if thoughtlessly or under honest misconception it is a mistake, but in either case fraught with the same evil consequences.

Two editorial items clipped from the daily Chicago Tribune of July 28, 1895, will illustrate what has been done and what is the tendency.

If the sacrifice, which I have mentioned, is demanded and enforced by the public, when the competition does

In some important respects the people of Glasgow, Scotland, have earned for their city the reputation of being perhaps the best governed in the world. They have done this by taking the administration of municipal affairs out of politics and putting it into the hands of business men, who not only have the ability to manage well but take a pride in administering the finances of the city economically, improving the physical and moral health of their constituents, and putting as much brightness and happiness into their lives as seems possible under the conditions they have to deal with. The public is supplied with water, gas, electric lighting, parks, baths, city railroads, and clean streets, as well as police and fire protection, at a minimum of cost, all the business being conducted as economically as it could be if done without profit by private corporations. The secret of this almost anomalous success is stated to be that politics, political pulls, rings, etc., are entirely unknown. The solid business-men of the municipality are willing to assume the cares and burdens of office as aldermen, with no other remuneration than the good they share with other citizens and the consciousness of doing their duty, regarding themselves as directors of a great co-operative undertaking, with high duties and responsibilities, and not as professional office-holders, continually scheming to obtain places for friends and keep their own.

Glasgow has the best water in the world, obtaining it from Loch Katrine, and Dublin is the only city that gets it cheaper. It supplies twenty-two candle-power gas to the people at the rate of 60 cents per 1,000 cubic feet. Six years ago it bought out the city railway companies, and immediately after the purchase put on 300 new cars, 3,000 horses and 1,700 new men. It now is carrying per week 300,000 one-cent fares, 600,000 two-cent fares, 95,000 three-cent fares, and 20,000 four-cent fares, and it is contemplated to make a uniform fare of only two cents for all distances. The other departments are well managed, and all for the best interests of the citizens, good service being given at the lowest paying cost.

The sinking fund plan is applied to every enterprise under municipal control in Glasgow, and it is stated to be the secret of success in its financial management. The present liabilities aggregate about forty million dollars, 80 per cent. of which is invested in the water service, and the assets are rated as worth fifty million dollars, the difference of ten millions standing on the pleasant side of the profit and loss account. It is expected that within the next quarter of a century a large part of the indebtedness, if not all of it, will have been cleared off, leaving the people to pay nothing more than the cost of current maintenance and repair. That is, provided the bad element does not obtain control in the mean-

not unavoidably take place; or if it is demanded and enforced farther or longer than the existing competition indispensably requires; it is tyranny; it is not government.

time, which probably it will not. The corruptionist would find "fat pickings" there, if he ever should get into power and dared to encounter the consequences of robbing the "canny Scot" by means of political jobbery. It goes without saying that a similarly economical management of municipal affairs would be impossible in the big cities of the United States, so long as the bad classes exercise so much power as they now do, in filling places by dictation and misguiding for boodle on the one hand and immorality on the other.

It is useless to say it can't be done when instances are at hand where it has been done.

To say that the constitution may prohibit this or that is easily adjusted by amending the constitution.

The following editorial comment upon Justice Brown's Yale address and the address itself are clear presentation of facts.

"The August 1895 number of the Forum contains the greater part of the address given last month before the graduating class of the Yale Law School by Justice Brown of the United States Supreme Court. Only brief extracts were published at the time it was delivered. Presenting, as it does, the views of a member of the highest American court regarding certain burning questions of the day it possesses a special value.

If, says the Justice, any person had endeavored to forecast at the time of the ratification of the Federal Constitution the events of the coming hundred years he would have left out of his calculations altogether those two inventions which have had the most influence on the progress of the century—the employment of steam for the purposes of transportation and of electricity for the transmission of intelligence. So, whoever assumes to prophesy what the twentieth century will bring forth, is likely to be as far astray as would have been the prophet of 1789, who could not foresee the consequences of steam and electricity.

But there are certain secondary effects, which have become apparent within the last third of a century, which threaten not only to affect the political future of every State but also to revolutionize the entire productive industry of the world. They may be summed up in the one word "consolidation." The small States are absorbed by the great ones. Many small enterprises are replaced by a few large ones. Great corporations monopolize the production of all the comforts and many of the necessaries of life. The small employer is disappearing.

The processes of combination, says the Justice, have not only put practically the entire manufacturing industry of the country into the hands of corporations, but have enabled the latter to put an end to com-



The citizen has rights as well as duties: the latter he is obliged to perform: the former he is entitled to enjoy

petition among themselves by the creation of trusts. On the other hand, labor is gradually consolidating, with the avowed purpose of dictating the terms upon which the productive and transportation industry of the country shall be carried on. The reconciliation of this strife between capital and labor, if possible, is the great social problem of the coming century.

The Justice does not believe that the solution lies in the triumph of Socialism and the destruction of private property, but there may be a gradual enlargement of the functions of government and the ultimate control of national monopolies. He can see no sound reason why the government may not own railroads as well as highways, and why a city may not run street-railways, gas-works, etc.

But while he has no doubt of the ultimate settlement of these social problems, the Justice sees certain perils which menace the immediate future of the country, and even threaten the stability of its institutions. They are municipal misgovernment, corporate greed, and the tyranny of labor. Concerning the first of these he has nothing to say that has not been said before, nor does he suggest a remedy, except that if universal suffrage fails and "we cannot have government by the whole people, let us have government by the better classes and not by the worst."

Corporations within their proper sphere are a blessing, but corporate powers have too often been grossly abused. Worse than this, however, is the combination of corporations in trusts to limit production, stifle competition, and monopolize the necessaries of life.

If no student can light his lamp without paying tribute to one company; if no housekeeper can buy a pound of meat or of sugar without swelling the receipts of two or three all-prevailing trusts—what is to prevent the entire productive industry of the country becoming ultimately absorbed by a hundred gigantic corporations?

But the most immediate danger, says the Justice, is the tyranny of labor.

It arises from the apparent inability of the laboring-man to perceive that the rights he exacts he must also concede. If, for instance, an employer of labor should discharge an employé or refuse to hire him because of a difference between them as to wages, and should then forbid his obtaining employment elsewhere, and should assault the person and burn the property of any one who proposed to give him work, he would naturally be considered a fit subject for mental treatment; yet a year never passes in which outrages of this description are not perpetrated under the name of "rights of labor." Men are harried, assaulted, and stoned simply because they are willing to work for less than their assail-

or recover. To that original contract of association, to which, in our reasonings concerning government, an appeal must so often be made, he is a party; nay, in point of right, a party, voluntary, independent, equal. On one side, indeed, there stands a single individual: on the other side, perhaps, there stand millions: but right is weighed by principle; it is not estimated by numbers. From the necessity of the case, as was shown on a former occasion,<sup>1</sup> if a controversy arises between the parties to the social agreement, the numbers, or a selection from the numbers, must be the judges as well as one of the parties. But, because those of one party must, from the necessity of the peculiar case, be the judges likewise; does it follow, that they are absolved from that strict obligation, by which every judge is sacredly bound to administer impartial justice? Does it follow, that they may with avidity, listen to all the interested suggestions, the advice of which a party would pursue? When the same person is

ants, while property is burned, public travel arrested, and large cities reduced to hunger, that great corporations may be compelled to employ workmen at wages fixed by themselves. This, too, in a nominally free country.

Such conditions the Justice says are intolerable. And yet he does not think the outlook for a permanent peace between capital and labor an encouraging one, though he thinks a compromise may be effected on the basis of profit-sharing. But in spite of these threatening dangers Justice Brown says that "so long as we can preserve the purity of our courts we need never despair of the Republic."

With diffidence it is suggested that while the sheet-anchor<sup>8</sup> of our hope may be an able and an honest court, the foundation of our political structure must be laid beneath either the legislative, the executive or the judicial branches of the Government; these pillars rest upon the broad basis of the people, and if the hearts of the people are corrupt the structure falls of its own weight. As Demosthenes pointed out in the Third Phillipic, a quotation from which is given (ante, p. 268), the virtue must reside in the hearts of the people. Whatever corrupts them is noxious, whoever leads them astray is alien-hearted, whether native or alien born.]

<sup>1</sup> Ante, p. 166.

and must be both judge and party; the character of the judge ought not to be sunk in that of the party; but the character of the party should be exalted to that of the judge.

When questions—especially pecuniary questions—arise between a state and a citizen—more especially still, when those questions are, as they generally must be, submitted to the decision of those, who are not only parties and judges, but legislators also; the sacred impartiality of the second character, it must be owned, is too frequently lost in the sordid interestedness of the first, and in the arrogant power of the third. This, I repeat it, is tyranny: and tyranny, though it may be more formidable and more oppressive, is neither less odious nor less unjust—is neither less dishonorable to the character of one party, nor less hostile to the rights of the other, because it is proudly prefaced by the epithet—legislative. He who refuses the payment of an honest demand upon the public, because it is in his power to refuse it, would refuse the payment of his private debt, if he was equally protected in the refusal. He who robs as a legislator, *because* he dares, would rob as a highwayman—*if* he dared.

And are the public gainers by this? Even if they were, it would be no consideration. The paltry gain would be but as dust in the balance, when weighed against the loss of character—for as the world becomes more enlightened, and as the principles of justice become better understood, states as well as individuals have a character to lose—the paltry gain, I say, would be but as dust in the balance, when weighed against the loss of character, and against the many other pernicious effects which must flow from the example of public injustice. But the truth is, that the public must be losers, instead of being gainers, by a conduct of this kind. The mouth, which will not utter the sentiments of truth in favor of an

honest demand, may be easily taught to repeat the lessons of falsehood in favor of an unjust one. To refuse fair claims, is to encourage fraudulent ones upon the commonwealth. Little logic is required to show, that the same vicious principles and dispositions which oppose the former, will exert their selfish, or their worse than selfish, influence to support the latter.

I think I have proved, that if the sacrifice, which has been mentioned, is demanded and enforced by the public, when the competition between public and private interest does not take place, it is tyranny, and not government; folly, and not wisdom. I have added, that if this sacrifice is demanded and enforced farther or longer than the competition indispensably requires, this, too, is tyranny, and not government. This likewise it is easy to prove.

There may be times, when, to the interest, perhaps to the liberty of the state, every private interest and regard ought to be devoted. At those times, such may be the situation and the peril of the commonwealth—for it is in perilous and distracted times, that, by the citizens, extraordinary exertions of duty ought to be made—at those times, a citizen obeys his duty's and his country's sacred call; he makes the necessary sacrifices, without expressly stipulating for a recompense: of demanding such a stipulation, the impropriety and the indelicacy may be equally evident. Great sacrifices and great exertions are made with faithfulness and zeal; perhaps, with considerable success. The perils disappear: to distraction and danger, peace and serenity succeed: the commonwealth becomes flourishing and opulent. Ought the sacrifice, which, in the hour of her distress and danger, was made at her call, to be continually enforced and demanded by her, after the danger and distress are over? But this sacrifice is demanded and enforced continually, if this citizen has neither received, nor had it in his power to recover, that

recompense, which is just. This case—if such a case has ever happened—may go without any actual redress; but it can never go without well-grounded complaint.

There is a sacrifice of another kind, not indeed so great, but, on some occasions, very vexatious, which is required of a citizen under a republican government, unnecessarily, and against his rights. He is frequently pestered with a number of frivolous, ambiguous, perplexed, and contradictory laws. The very best constitutions are liable to some complaints. What may be called the rage of legislation is a distemper prevalent and epidemical among republican governments.

Every article of the social contract cannot be ascertained: some of its leading principles cannot easily be mistaken. One certainly is, that, in a free state, the law should impose no restraint upon the will of the citizen, but such as will be productive of advantage, public or private, sufficient to overbalance the disadvantages of the restraint: for, after all, we shall find that the *citizen* was made for the sake of the *man*. The proof of this advantage lies upon the legislature. If a law is even harmless, the very circumstance of its being a law, is itself a harm. This remark might be remembered, with profit, in the revision of many codes of law. In a word; government and human laws are necessary; if good, they are inestimable, in the present state. It must be admitted, however, that they are a burden and a yoke: they should resemble that yoke which is easy, and that burden which is light.

The citizen under a free government has a right to think, to speak, to write, to print, and to publish freely, but with decency and truth, concerning public men, public bodies, and public measures.

Thus much concerning the duties and the rights of a private citizen.

I am next to treat of aliens.

———*homo sum;*

*Nihil humani alienum a me puto.*

If this humane maxim had prevailed, as it ought to have prevailed, in the establishment of government, and the formation of laws; the title, which relates to aliens, would have been of an import very different from what we generally find it to be.

The contracted and debasing spirit of monopoly has not been peculiar to commerce; it has raged, with equal violence, and with equal mischief, in law and politics.

In ancient times, every alien was considered as an enemy. The rule, I think, should be reversed. None but an enemy should be considered as an alien—I mean—as to the acquisition and the enjoyment of property. The rights of citizenship are the rights of parties to the social compact. Even to these, aliens should be permitted to accede upon easy terms.

This subject is of high importance to the United States; to Pennsylvania, in particular.

When I speak of the contracted rule, which prevailed in ancient times, I mean to speak, and I wish to be understood, with some illustrious exceptions. These deserve to be distinctly pointed out. From them, valuable instruction may be drawn.

The general policy of the Egyptians was unfriendly to strangers. It is even said of them, that they were accustomed to kill, or reduce to slavery, all those whom they found upon their coasts; except at one city only, at which they were allowed to land and trade. But Psammeticus, one of their princes, observed maxims of a more humane and enlightened nature. He favored navigation in his seas; he opened his ports to the commerce of all nations; and he granted every kind of encouragement to every one.

who would settle in Egypt. Amasis, one of his successors, governed, by the same principles, his behavior towards foreigners. He conferred many benefits upon the Grecians; and even allowed them to erect altars and temples. Under the government of Amasis, it is observed, Egypt was perfectly happy.<sup>1</sup>

Under the famous Theseus, the rival and the friend of Hercules, strangers were invited to participate the privileges of Athens: from all parts the invitation was accepted; and the new citizens were incorporated with the ancient Athenians. Everything now, it is added, seemed favorable to his views: he governed a free people with moderation and benevolence; he was esteemed and beloved by the neighboring nations; and he enjoyed a foretaste of that profound veneration, with which succeeding ages gradually honor the memory of great men.<sup>2</sup>

This policy, enlarged and generous, was continued in Attica, during many ages after Theseus; and rendered that celebrated country the most frequent resource of the miserable. On a particular occasion, the descendants of the great Hercules, divested of their possessions and driven into banishment by one of the vicissitudes of the times, enjoyed the advantages of the policy introduced by the friend of their ancestor: they were received by the Athenians.<sup>3</sup>

When it was, in the time of Lysias, attempted to contract the foundation of the Athenian government; this part of their ancient policy is, in his oration against that attempt, mentioned with particular respect. "As to myself, I hold it to be the best security for the state, that all have an equal share in the government. When formerly we built walls, and acquired a fleet, and money, and allies, we regarded not these advantages as obtained only for ourselves; we shared them with the Eubæans, by establishing the right of intermarriage. Such were once our

<sup>1</sup> 3 Gog. Or. Laws, 15. 12.

<sup>2</sup> 1 Anac. 31. 32.

<sup>3</sup> 1. Gill 69

principles : by bestowing on strangers the honors of our country, we rendered them our friends : shall we now, by degrading our fellow citizens, render them our enemies ? Never let this take place.”<sup>1</sup>

“ By those states,” says my Lord Bacon, in his book concerning the augmentation of the sciences, “ who have easily and liberally communicated the right of citizenship, greatness has been most successfully acquired. No commonwealth opened its bosom so wide for the reception of new citizens, as the commonwealth of Rome. The fortune of the empire was correspondent to the wisdom of the institution ; for it became the largest on the face of the earth. It was their custom to confer the right of citizenship in the most speedy manner ; and in the highest degree too—I mean not only the right of commerce, the right of marriage, the right of inheritance ; but even the right of suffrage, and the right to the offices and the honors of the republic. So that it may be said, not that the Romans extended themselves over the whole globe, but that the inhabitants of the globe poured themselves upon the Romans. This is the most secure method of enlarging an empire.”<sup>2</sup>

My Lord Hale, another lawyer of eminent name, speaks in the same spirit. “ The shutting out of aliens,” says he, “ tends to the loss of people, which, laboriously employed, are the true riches of any country.”<sup>3</sup>

In the law of England, there is a distinction between two kinds of aliens—those who are friends, and those who are enemies. Among alien enemies a subdivision is made, or at least was made till lately, which must occasion some degree of astonishment. Alien enemies are distinguished into such as are temporary, and such as are perpetual. Nay ; what is more ; this line of distinction,

<sup>1</sup> Gil. Lya. and Isca. 319.

<sup>2</sup> 1 Ld. Bac. 245.

<sup>3</sup> 1 Bac. 76, Vent. 427.



certainly never drawn by the peaceful spirit of Christianity, is attempted to be marked by the progress of the Christian system. "All infidels"—these are the expressions of my Lord Coke in the report of Calvin's case—"all infidels are perpetual enemies; the law presumes not that they will be converted; between them, as with the devils, whose subjects they are, and the Christian, there is perpetual hostility; and can be no peace;"—for he fortifies the favorite sentiment by a pleonasm: he goes farther—he attempts to fortify it by the language, tortured surely, of Christianity itself. "Quæ autem conventio Christi ad Belial; aut quæ pars fideli cum infideli."<sup>1</sup>

"Upon this ground," continues he, "there is a diversity between a conquest of the kingdom of a Christian king, and the conquest of that of an infidel. In the former case, the ancient laws of the kingdom remain, till they are altered by the conqueror: in the latter case, they are immediately abrogated; and, till new laws be established, the conqueror shall judge them according to natural equity."<sup>2</sup>

The character of an opinion, like the character of a man, may be illustrated by tracing its history and pedigree. The opinion, that "the common law of England, as such, has no allowance or authority in the American plantations," is the bastard child of this bastard mother, begotten on her body by the Commentaries<sup>3</sup> on the laws of England. This very case of Calvin, and this very part of Calvin's case, is cited—none better could be cited—as the authority for an opinion, which was calculated to cut off the noblest inheritance of the colonies: to use, for once, a language *technically* legal, the colonies were *mulier*, though they were *puisne*—they were legitimate, though they were young.

But to return to the subject of alienage—an alien, ac-

<sup>1</sup> 2 Cor. VI. 15.

<sup>2</sup> 6 Rep. 17.

<sup>3</sup> 1 Bl. Com. 167.

According to the notion commonly received as law, is one born in a strange country and in a foreign society, to which he is presumed to have a natural and a necessary allegiance.<sup>1</sup>

Error, as well as truth, is sometimes connected by a regular chain. A man is deemed a dangerous enemy or a suspicious friend to that country in which he wishes to reside, because he is previously deemed an appurtenant or a slave to that country in which he chanced to be born. Such is *one* of the consequences of "natural and necessary allegiance."

Between alien friends, who are temporary subjects, and subjects naturalized or natural born, a species of subjects intermediate is known to the law of England. They are distinguished by the appellation of denizens. The power of denization is a high and incommunicable portion<sup>2</sup> of the prerogative royal. A denizen is received into the nation, like a person who is dropt from the clouds. He may acquire rights, but he cannot inherit them, not even from his own parent: he may transmit rights to his children, who are born after his letters patent of denization; but not to those who were born before. A denizen may be moulded into a thousand fantastical shapes: he may be a denizen in tail, a denizen for life, a denizen for years, a denizen upon condition, a denizen in one court of justice, and an alien in another.<sup>3</sup> Of those modifications, however, a subject naturalized is unsusceptible; because, we are told, they would be inconsistent with the purity, the absoluteness and the indelibility of natural allegiance.<sup>4</sup> For a sound rule, we receive an unsound reason.<sup>5</sup>

<sup>1</sup> 1 Bac. 76.

<sup>2</sup> 1 Bl. Com. 374.

<sup>3</sup> 1 Ins. 129, a.

<sup>4</sup> 1 Ins. 129, a.

[<sup>5</sup> Legislation in reference to denizens by name is not unknown in the United States, but ordinarily the subject passes under the title of aliens. Such acts are referred to in the arguments of the case referred to as to the

Between a subject naturalized and a subject natural born, the distinction is merely nominal as to private rights: it applies only to the manner, in which those rights are devolved. On one they are devolved by his birth: on the other, by the consent of the nation, expressed in the parliament. With regard, however, to public rights, the case is widely different. By statutes made even since the revolution, no subject naturalized can be a member of parliament; and no bill for naturalization can be received in either house of parliament, without such a disabling clause.<sup>1</sup>

Britain seems determined to merit and to perpetuate, in political as well as geographical accuracy, the description, by which it was marked many centuries ago—

—*divisos toto orbe Britannos.*

What a very different spirit animates and pervades her American sons! Indeed it is proper that it should do so. The insulated policy of the British nation would as ill befit the expansive genius of our institutions, as the hills, the ponds, and the rivulets, which are scattered over their island, would adequately represent the mountains, and rivers, and lakes of the United States. “In the new world”

oath required of denizens in the 2 Hill s. c. 17. These denizens owe allegiance to the government under which they live.” Quoted 16 Wallace U. S. 155.

Mr. Webster, then Secretary of State, made, in 1851, a report to the President in answer to a resolution of the House of Representatives, in which he said: “Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that, by the public law, an alien or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be, unless his case is varied by some treaty stipulation.”]

<sup>1</sup> 1 Bl. Com. 374.

—I speak now from one of the finest writers of Britain<sup>1</sup> —“in the new world nature seems to have carried on her operations with a bolder hand, and to have distinguished the features of the country by a peculiar magnificence. The mountains of America are much superior in height to those in the other divisions of the globe. From those lofty mountains descend rivers proportionably large. Its lakes are no less conspicuous for grandeur, than its mountains and rivers.” We imitate, for we ought to imitate, the operations of nature; and the features of our policy, like those of our country, are distinguished by a peculiar magnificence.

In a former lecture,<sup>2</sup> we have seen how easily the essential rights of citizenship can be acquired in the United States, and in every state of the Union. Let us now see, how liberally the doors are thrown open for admission to the public trusts and honors, as well as to the private rights and privileges, of our country.

At the end of two years from the time, at which a foreigner “of good character”—for numbers without virtue are not our object—a former mode of “*better peopling his majesty’s plantations*” is now fallen into disrepute—at the end of two years from the time,<sup>3</sup> at which a foreigner of good character sets his foot in this land of generosity as well as freedom, he is entitled to become, if he chooses,<sup>4</sup> a citizen of our national government. At the end of seven years, a term not longer than that which is frequently required for an apprenticeship to the plainest trade, the citizen may become legislator; for he is eligible as a representative in the congress of the United States.<sup>5</sup> After having, in that capacity, undergone the honorable

<sup>1</sup> 2 Rob. Amer. 3, 4.

<sup>2</sup> Ante, p. 18, et seq.

<sup>3</sup> By the law now in force, a residence of five years is required. Laws U. S. 7 cong. 1 sess. c. 28. *Ed.*

<sup>4</sup> Laws U. S. 1 cong. 2 sess. c. 3.

<sup>5</sup> Cons. U. S. art. 1 s. 2.

but short probationship of two years, the doors even of our national senate are opened as far as to receive him.<sup>1</sup>

In Pennsylvania, the citizen may become a representative<sup>2</sup> at the end of three, a senator,<sup>3</sup> at the end of four, and governor<sup>4</sup> of the commonwealth, at the end of seven years.

It would be tedious, and it is unnecessary, to multiply particulars, by going through all the sister states. In this, as in other respects, in which we have viewed them, we are still pleased with the

—facies, qualis decet esse sororum.

The rights and the disabilities of aliens with regard to property, especially with regard to landed property, forms a subject of investigation both interesting and nice. But, according to my uniform method, I postpone it until I arrive at the second great division of my system. The examination of general principles should precede that of particular rules.

One opinion, however, I will now mention: it seems to be founded on the authority of Sir Henry Spelman and the Grand Custumier of Normandy. The opinion is, that the law, by which an alien is prohibited from holding lands, is an original branch of the feudal system; because, by that system, no one could purchase lands, unless he did fealty to the lords, of whom they were holden; and because an alien, who owed a previous faith to another prince, could not take an oath of fidelity in a second sovereign's dominions.<sup>5</sup>

<sup>1</sup> Cons. U. S. art. 1, s. 3.

<sup>2</sup> Cons. Penn. art. 1, s. 3.

<sup>3</sup> Cons. Penn. art. 1, s. 8.

<sup>4</sup> Art. 2, s. 4.

<sup>5</sup> 1 Bac. 76. Tit. Allen.

<sup>6</sup> Restrictions upon the right to take or transmit title to real estate exists in many states of the Union. There would seem to be no reason for distinguishing between holding real estate and chattels, but the right of aliens to own and control corporations is more dangerous than either and combines all the objectionable features of each.